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Report by the Special Rapporteur on the human rights of migrants, François Crépeau

Addendum

Follow-up mission to Italy (2–6 December 2014)*

Summary

The Special Rapporteur on the human rights of migrants conducted a visit to Italy from 2 to 6 December 2014. He visited Rome and held consultations with government officials, civil society organizations and agencies of the United Nations.

Despite a challenging economic and political climate, Italy has taken bold initiatives to address the unprecedented number of migrants and asylum seekers arriving by boat. The European Union member States must collectively support front-line States such as Italy in order to provide a sustainable response that ensures full respect for the human rights of migrants.

* The summary of the present report is circulated in all official languages. The report itself, which is annexed to the summary, is circulated in the language of submission only.

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Annex

[English only]

Report by the Special Rapporteur on the human rights of migrants, François Crépeau, on his follow-up mission to Italy (2–6 December 2014)

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I. Introduction

1. From 2 to 6 December 2014, the Special Rapporteur on the human rights of migrants conducted an official follow-up visit to Italy. The visit was undertaken in follow-up to the Special Rapporteur's 2012 year-long study on the management of the external borders of the European Union (A/HRC/23/46), which included a mission to Italy (see A/HRC/23/46/Add.3 and Corr.1).

2. The Special Rapporteur reaffirmed the importance of addressing irregular border crossings, recalling that it is in the context of such crossings that the most egregious human rights abuses appear to take place (see A/HRC/23/46, para. 20). The increased numbers of migrant crossings and deaths in the Mediterranean Sea and the response by European Union member States prompted him to revisit the issue of European Union border management. In addition, in September 2014 the Human Rights Council, through presidential statement 27/3, requested the Special Rapporteur, among others, to pay particular attention to the protection of migrants at sea. Consequently, the present report is focused on external border control, and does not provide a comprehensive overview of the broader human rights situation of all migrants in Italy. The report should be read in conjunction with the Special Rapporteur's 2012 report on his mission to Italy (A/HRC/23/46/Add.3 and Corr.1) and with his 2014 reports on Malta (A/HRC/29/36/Add.3) and the European Union (A/HRC/29/36).

3. During his mission, the Special Rapporteur visited Rome and met with representatives of the Ministry of Foreign Affairs and International Cooperation, the Ministry of the Interior, the Ministry of Justice, the Italian Coast Guard, the Authority for Children and Adolescents and the National Office against Racial Discrimination and with members of the Senate Commission for Human Rights. He also met with representatives of the Office of the United Nations High Commissioner for Refugees (UNHCR) and the International Organization for Migration.

4. The Special Rapporteur also consulted with numerous civil society organizations, lawyers and academics working in the field of migration.

5. The Special Rapporteur expresses his sincere appreciation to the Government of Italy for its support throughout the visit and to UNHCR for its excellent support and assistance in preparing and carrying out the visit.

II. Background on Italy and migration: a brief overview

6. In 2014, an unprecedented number of migrants and asylum seekers arrived in the Euro-Mediterranean region. Given its long coastline and its proximity to North Africa, Italy continues to be a key point of entry for many migrants seeking to reach Europe.

7. Migrants take flight owing to the push factors in their countries of origin, which may include war, conflict, natural disasters, persecution or extreme poverty, as well as in response to pull factors, such as unmet needs in the labour markets of European Union member States. Migrants are often willing to do the "dirty, difficult and dangerous" jobs that nationals will not, at the exploitative wages that unscrupulous employers offer, including in the construction, agriculture, hospitality and caregiving sectors.

8. According to UNHCR, more than 200,000 refugees and migrants reached Europe by crossing the Mediterranean by sea in 2014, compared to 60,000 in 2013. Italy received over 140,000 arrivals in 2014, most of whom were rescued at sea by the Italian navy operation Mare Nostrum.

9. UNHCR estimates that over 3,500 people died or went missing at sea in 2014, in comparison to just over 600 in 2013. Most boats carrying irregular migrants to Europe sail from Libya, others leave from Tunisia or Egypt. The Mediterranean has been recognized by UNHCR as a mixed migration channel, used both by economic migrants and by those seeking international protection. A significant proportion of those currently using this precarious route are Eritreans and Syrians seeking asylum.

10. In 2014, the number of Eritreans and Syrians arriving by sea to Italy increased by almost 400 per cent and 600 per cent, respectively, compared to 2013. More women, children and elderly persons are embarking on such journeys, adding to the already large proportion of vulnerable people aboard unsafe boats. In 2014, over 18,000 children arrived in Malta and Italy by sea, including at least 10,000 unaccompanied minors, mainly boys between the ages of 12 and 16. Many of the migrants who arrive are under the age of 30.

11. Irregular migrants who have been rescued have reported that they were abused and exploited at each stage of their migration towards Italy and the European Union. Before departure, migrants can often spend several days or weeks detained by smugglers, without information and in constant fear of being deceived and abused. During sea crossings, they end up in unseaworthy and overcrowded boats, typically made of rubber or wood, packed into a few metres of space with no food or water. Life vests cost extra, and most migrants do not get one. The journey can take one to four days, or even longer, depending on the weather, the sea conditions and the condition of the boat. In several incidents people have been stranded on boats for more than two weeks before being rescued. Many arrivals are diagnosed with trauma and report being victims of or witnesses to physical and sexual violence, in some cases perpetrated by smugglers.

12. This sudden and growing surge in demand for Mediterranean Sea crossings has resulted in a deterioration of the already precarious conditions of the journey and an increase in smuggling, as ruthless groups charge migrants thousands of euros to facilitate dangerous routes into the European Union.

13. For many who arrive, especially Syrians and Eritreans, Italy is considered a country of transit. From their port of arrival in Italy, migrants most often make their way to Milan and then onwards to countries such as Austria, Germany and Sweden. Onward movement and asylum claims tend to vary among migrants of different nationalities. Syrians who arrive in Italy are reportedly able to leave reception centres within 48 hours. Such reception centres are open facilities that allow migrants freedom of movement. Eritreans are not usually as well connected as Syrians and do not have as many resources, and therefore wait longer to leave Italy, sometimes for six weeks or more, if they leave at all. Some Eritreans and other non-Syrian migrants prefer to apply for asylum in Italy because it offers better opportunities for protection than they would find in other parts of Europe. The rate of positive decisions in refugee status and subsidiary protection determination cases is 32 per cent in Italy, higher than the rates in several other European Union countries.

14. The Italian Coast Guard predicts an increase in the numbers of migrants arriving in 2015. This is not only because war, conflict and extreme poverty continue to push people to seek safety in Europe, but also because, with asylum seekers paying huge sums to cross the Mediterranean by boat, there is a powerful incentive for smugglers to continue to increase their activities.

III. Normative and institutional framework on migration and border management

15. In the present section, the Special Rapporteur will discuss only the legal framework developed since his previous country visit to Italy.

A. Regional framework

16. The European Convention for the Protection of Human Rights and Fundamental Freedoms, which was adopted in 1950 by the Council of Europe and entered into force in 1953, contains substantive rights that reflect, to a large extent, the rights enshrined in the International Covenant on Civil and Political Rights. The Convention is complemented by 14 additional protocols which have introduced substantive human rights guarantees. The European Court of Human Rights upholds the Convention. Regarding forced or collective expulsions of migrants and asylum seekers, the Court has handed down judgements in the following cases involving Italy.

17. On 23 February 2012, the Court made a landmark decision in *Jamaa and Others* v. *Italy*, holding unanimously that Italy had violated the Convention when it forcibly returned a group of asylum seekers by sea to Libya, where they were at risk of violations of their human rights and in danger of being repatriated to their home countries. According to the Court's judgement, even when individuals are intercepted in international waters Government authorities are obliged to abide by international human rights law. They must offer each person they intercept an individual procedure and the means to challenge a decision to return them to their country of departure.

18 On 21 October 2014, in *Sharifi and Others* v. *Italy and Greece*, the Court confirmed its position concerning collective expulsion by Italian authorities. It reiterated the importance of ensuring that all migrants had access to the asylum procedure, so as to prevent forced returns to countries where migrants might be subject to inhuman or degrading treatment.

19. In several cases, the Court found that asylum seekers who were returned to Italy under the Dublin regulations would not be subject to ill-treatment.[1] However, on November 2014, in *Tarakhel* v. *Switzerland*, the Court ruled that there would be a violation of article 3 of the Convention if the applicants were to be returned to Italy without the Swiss authorities having first obtained individual guarantees from the Italian authorities that the applicants would be taken charge of in a manner adapted to the age of the children and that the family would be kept together.

20. In the *Sharifi* case, the Court clarified its position, stating that the Dublin system, which is used to determine which European Union member State is responsible for examining an asylum application lodged in one of the member States by a third-country national, must be applied in a manner compatible with the European Convention on Human Rights. The Court clarified that no form of collective and indiscriminate returns could be justified by reference to the Dublin system, and it was for the State carrying out the return to ensure that the destination country offered sufficient guarantees in the application of its asylum policy to prevent the person concerned from being removed to her country of origin without an assessment of the risks faced.

21. The Special Rapporteur welcomes these rulings made by the European Court of Human Rights and urges Italy and other European countries to fully implement them in law and in practice.

[1] *Hussein* v. *the Netherlands and Italy*, decision adopted on 2 April 2013; *Halimi* v. *Austria and Italy* decision adopted on 18 June 2013 and *Abubeker* v. *Austria and Italy*, decision adopted on 18 June 2013.

B. National legal, institutional and policy framework

1. Legal framework

22. In this section, the Special Rapporteur will touch only upon legislation introduced following his country visit to Italy in 2012. Since then, there has been a significant degree of legal reform in relation to the human rights of migrants within Italy, as outlined below.

23. Legislative Decree No. 109 of 16 July 2012, on implementing Directive 2009/52/EC of the European Parliament and of the Council, introduced sanctions and measures against employers of illegally staying third-country nationals and, by modifying article 22 of the Immigration Act, introduced a protection mechanism for irregular migrants who decide to report their situation of exploitation to the police.

24. Legislative decree No. 119 of 15 October 2013 introduced article 18 bis in the Immigration Act, adding the possibility for migrant women subject to psychological and physical violence (especially within the family) to report their case to the police and obtain a residence permit for humanitarian reasons.

25. Decree-Law No. 146/2013 of 23 December 2013, which was converted to Law No. 10/2014 on 21 February 2014, was introduced to help with the identification of migrant prisoners to avoid further administrative detention once their prison term had been served.

26. Legislative Decree No. 18/2014 of 21 February 2014, which transposes into national law European Union Directive 2011/95/EU, sets standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or persons eligible for subsidiary protection, and for the content of the protection granted. Beneficiaries of subsidiary protection now enjoy the same rights afforded to refugees, in particular with regard to family reunification and to the period of validity of their residence permits, which was increased from three years to five years. The legislative decree also introduced the National Integration Plan for the beneficiaries of international protection.

27. Law No. 67/2014 of 28 April 2014 mandated the government to abolish the criminal offence of irregular entry or stay in Italian territory within 18 months and to, in its place, establish administrative sanctions. Irregular migrants re-entering the country following an expulsion will continue to face criminal sanctions. The Special Rapporteur notes the decriminalization of irregular migration as a positive step, but remains concerned that the law has yet to be effectively implemented.

28. Law No. 190/2014 of 1 January 2015 provides for the transfer of resources for unaccompanied minors from the Ministry of Labour to the Ministry of the Interior and the establishment of a new fund for the reception of all unaccompanied minors with an annual budget allocation of €32.5 million per year.

C. Italy and the European Union: regional influence on national laws, policies and institutions in the sphere of migration management and border control

29. Since its implementation of the Schengen acquis in 1998, Italy continues to be a key point of entry into the Schengen area, and its coastline is one of the major external sea borders of the European Union. As a border State within the Schengen area, Italy is in a difficult position: it is responsible for the European Union border at a time of significant peaks in irregular migration and with very limited support from the European Union and other European Union member States (see A/HRC/23/46/Add.3 and Corr.1 for more details).

30. The Special Rapporteur observes that, under the Schengen system, any irregular migrant who is registered in Italy will be returned to Italy, even if they move to another country within the European Union. This can create a situation where irregular and undocumented migrants become stuck in Italy: in particular those without documents often become trapped, as they are unable to travel to other countries within the European Union or safely return home.

31. Following heavy criticism of the Dublin II regulation, including the greater pressure it puts on front-line European Union member States, Regulation No. 604/2013 of the European Parliament and of the Council of the European Union (the Dublin III regulation) came into force on 1 January 2014. It provides enhanced safeguards for applicants for international protection in Europe, including a provision that stipulates that, while waiting for a decision on his or her appeal, a person has the right to remain in the country (a suspensive right of appeal), and a clause designed to prevent breaches of human rights, whereby a State is not permitted to transfer a person to another European Union member State if there is a risk that he or she would be subjected to inhuman and degrading treatment in that member State. This means that States will be obliged to undertake their own assessment of the situation rather than continue to apply the Dublin regulations on returning migrants unless the European Court of Human Rights or the European Court of Justice take a decision to the contrary.

32. The Dublin III regulation introduces an early warning mechanism, which is aimed at making it easier to detect problems in a member State's asylum system so that the European Union Commission and the European Asylum Support Office can provide assistance before the situation degenerates. The regulation contains an emphasis on respect for family life, including provisions to ensure that transfers under Dublin III facilitate family unity as much as possible. It also widens the definition of the family to benefit unaccompanied minors, who can now be reunited with grandparents, uncles or aunts living in a European Union member State. Additionally, during personal interviews, officials are required to inform applicants that they may provide information about family members in other European Union member States, which will be taken into account in the determination as to which State is responsible. The Dublin III regulation also provides for the production of a common information leaflet on Dublin and a specific leaflet for unaccompanied minors.

33. A key area of concern is that, under Regulation No. 603/2013 of the European Union, migrants entering the European Union are fingerprinted to ensure that their asylum claim is processed in the correct member State in accordance with the Dublin system. If migrants attempt to enter another European Union member State, they are returned to where it has been deemed their application should be made — usually the first country of entry. Migrants often do not want to have their fingerprints taken because, as discussed above, they have plans to travel to other countries in Europe.

34. The Special Rapporteur is concerned that this requirement creates tension between irregular migrants and border officials in the context of arrivals in Italy. In September 2014, the Department of Public Security of the Ministry of the Interior issued a circular containing operational guidelines for police on identification procedures for migrants, explicitly authorizing police officers to use force in cases where migrants do not cooperate and refuse either to provide personal details or to have their fingerprints taken. The Special Rapporteur expressed his concern about the use of these guidelines for purposes related to the Dublin system, especially as the limits on the use of force are unclear. Border guards face particular difficulty in fingerprinting large groups of migrants who refuse to have such data collected. The Special Rapporteur received information about the use of excessive force for identification purposes, which included the use of physical violence and tasers. He

also received information about ill-treatment of irregular migrants who had just arrived in Italy.

35. Another issue of concern to the Special Rapporteur is the observation that the Dublin system continues to create a situation where persons who may have a valid asylum claim avoid lodging that claim in Italy because they believe they will not receive adequate protection or opportunities there. Many asylum seekers in Italy are unable to gain assistance for integration or find a job, due to the economic crisis, and do not receive social benefits, which makes them vulnerable to becoming homeless. The number of those arriving in Italy is far higher than the number of those who remain, showing that Italy is reachable but is not the country of destination for most migrants. This demonstrates that the Dublin system exacerbates vulnerabilities by creating a situation in which persons with valid asylum claims choose not to lodge their claim, but rather continue their journey as undocumented migrants, thus remaining at a high risk of abuse and exploitation.

36. The Special Rapporteur is also concerned about the lack of trust in the capacity of the Dublin system. Irregular migrants appear to distrust Dublin procedures, such as those for family reunification. Those processes often take months, whereas a smuggler can reunite migrants with their family within days. The Special Rapporteur was informed that the Italian office dealing with cases that fall under the Dublin regulations was understaffed and required more resources in order to make the most of the improvements of the Dublin system.

37. The Special Rapporteur cautions that migrants must see the benefits of following the procedures of the Dublin system, including identification and fingerprinting, or they will continue to try to evade such procedures and find alternative means to reach and travel through Europe. In the view of many migrants, the foreseeable consequence of respecting the Dublin procedures is that they will be kept on, or returned to, Italian territory and prevented from reaching their intended country of destination.

IV. Border management

38. The Special Rapporteur observed that the Lampedusa tragedy of October 2013 and the increased numbers of irregular migrants arriving in Italy by boat had shifted the focus of the country's migration policies from a reliance on securing its borders to a response that emphasizes humanitarian assistance and more recognition of the human rights of migrants.

A. Rescue at sea

1. Italian Coast Guard

39. The Special Rapporteur was pleased to learn that the safety of migrants travelling towards Italy still remains the key priority of both the Italian Coast Guard and the Financial Guard in migration-related operations at sea.

40. As discussed above, the majority of the boats carrying migrants to Italy depart from Libya, and safety conditions aboard the boats are extremely poor. Often, one of the migrants on a boat is given a satellite phone by smugglers with the instructions to call the Italian Maritime Rescue Coordination Centre after six or seven hours at sea. Callers normally report that there are women and children on board, that the boat is sinking, that they have no food, and/or that they are dying. The Italian Coast Guard sometimes receives over 25 calls simultaneously with the same detailed request, and it is difficult to determine which boat to prioritize in its search and rescue operations. The Coast Guard has also reported incidents where migrants had refused assistance offered by Malta, as they

preferred Italy. Italian search and rescue vessels are well equipped, with a medical team to offer emergency care, food, water and blankets. Once migrants reach land, their well-being is the responsibility of the Ministry of the Interior.

41. The Coast Guard has been monitoring an area of approximately 500,000 square kilometres. Officials informed the Special Rapporteur that 90 per cent of the search and rescue operations were conducted outside of the Italian search and rescue area. Libya does not have search and rescue capacity and Malta and Greece have limited capacity. Consequently, Italy is coordinating such operations for the entire Mediterranean. Although they have expressed their commitment to their rescue work, Coast Guard officers also have capacity limitations. Given the sheer numbers of arrivals, the Coast Guard confirmed the need for a more concerted effort to require the European Union and the broader international community to save lives.

2. Mare Nostrum

42. In October 2013, following two major shipwrecks in which 500 people died off the Italian coast and criticism that disputes between Italy and Malta had led to delays in rescue response time, Italy launched a naval search and rescue operation entitled Mare Nostrum. Its goal was to prevent further tragedies at sea and apprehend smugglers. The Italian navy employed an average of five of its ships and their air units in search and rescue operations.

43. The Special Rapporteur noted the extraordinary efforts made under Mare Nostrum, which resulted in over 150,000 persons being rescued. Italy had to devote 9 million euros monthly to this operation, at a time of high unemployment and economic crisis. Its repeated requests for financial, technical and human support from the European Union and other European Union member States were rejected and met with criticism.

44. Unable to sustain its bold operation, Italy officially ended Mare Nostrum in November 2014. However, its navy has continued to save lives at sea and has cooperated with Operation Triton, managed by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX), as discussed below.

3. Merchant vessels

45. Private vessels cooperate in and sometimes carry out search and rescue operations at the request of the Italian Maritime Rescue Coordination Centre. In 2014, 660 merchant vessels were involved in such operations; however, such assistance is provided at their own financial cost. The crews on the merchant vessels provide migrants with whatever emergency support they are able to offer until the migrants are disembarked at an Italian port. The Special Rapporteur noted that in February 2015 the International Organization for Migration had underlined that support provided by merchant vessels to search and rescue operations should remain exceptional, and that States should shoulder the main responsibility of fielding sufficient search and rescue capacity.

B. Cooperation on border management

46. The management of the external borders of Italy is further supported by FRONTEX, which works with the Guardia di Finanza and the border police to combat irregular migration, migrant smuggling and other migration-related offences. The FRONTEX joint operations Hermes 2014 and Aeneas 2014 were established at the request of the Government of Italy. Under Hermes, air surveillance was provided to detect migrant flows from Tunisia towards the south of Italy, whereas under Aeneas, flows from Egypt, Greece and Turkey towards Apulia and Calabria were monitored.

47. In April 2014, Regulation No. 656/2014 of the European Parliament and of the Council on surveillance of the external sea borders in the context of operational cooperation coordinated by FRONTEX was adopted, aimed at resolving confusion arising from diverging national interpretations of international provisions on maritime surveillance. The Regulation sets out clear rules for FRONTEX joint operations at sea, including with respect to the interception of vessels, search and rescue situations and the disembarkation of intercepted or rescued people; operational plans are to be established in accordance with the provisions of the regulation.

Joint Operation Triton

48. In November 2014, the joint operations Hermes 2014 and Aeneas 2014 were combined to form Joint Operation Triton. The operational area and necessary assets were agreed between FRONTEX and Italy, as the host State, on the basis of the requests for assistance made by the Italian authorities. The operation relies primarily on the human and technical resources made available by Italy.

49. Triton supports the Italian efforts — it does not replace or substitute Italian obligations in monitoring and surveying the Schengen external borders and in guaranteeing full respect of European Union and international obligations, including those relating to search and rescue operations. Italy will have to continue to make substantial efforts using national means, in full coordination with the FRONTEX operation, to manage its external borders.

50. The forces deployed as part of Joint Operation Triton respond to distress calls and have conducted search and rescue operations. However, they have limited reach outside Italian territorial waters and are not as well equipped as those under Mare Nostrum were, and will therefore not have the same impact.

C. Bilateral agreements

51. Italy has a number of bilateral agreements in place with countries of transit and origin. The refoulement of asylum seekers in the Hirsi case, discussed above, took place under the auspices of a bilateral agreement with Libya. The Special Rapporteur reiterates his concerns about bilateral agreements being used as a means of border control, often without sufficient human rights safeguards. He remains concerned about the lack of transparency surrounding such agreements: not only are negotiations conducted seemingly with very little external oversight or input, but often the final text is not publicly available, thus contributing to uncertainty regarding the content, interpretation and implementation of the agreements.

52. Of particular concern to the Special Rapporteur is the information he received about continued violations of the principle of non-refoulement and of the prohibition of collective expulsions with regard to the return of some migrants, possibly including minors, immediately after their arrival. He learned that, on the basis of bilateral readmission agreements, nationals of Egypt and Tunisia are often returned without having had access to asylum procedures; this has occurred in, among other places, Pozzallo. In addition, push-backs to Greece reportedly continue to occur in some locations, for example Fiumicino Airport in Rome; children are sometimes involved.

D. Regional processes

53. The Special Rapporteur learned of the involvement of Italy in the Khartoum and Rabat regional processes, which are aimed at ensuring more effective border control,

tackling smuggling and trafficking and addressing the root causes of migration, such as economic development and human rights issues in countries of origin. They are also exploring a common approach to enable those seeking asylum to do so closer to their countries of origin.

54. The Special Rapporteur remains cautious about such processes, as they are perceived mainly as enablers of migration control mechanisms aimed at preventing migrants from crossing the Mediterranean and reaching European Union territory, regardless of the consequences in terms of human rights violations. This approach leads to practices that drive migrants further underground, thus empowering and entrenching smuggling rings, increasing the precariousness of migrants and exposing migrants to more exploitation and human rights violations.

55. However, if conceived as part of a long-term plan to support development assistance cooperation with, and the political stabilization of, the countries of origin and transit, such processes could be useful. Clear objectives, transparency and accountability will be needed to inspire trust that these mechanisms have the human rights of migrants at heart.

V. Detention and reception of migrants in an irregular situation

A. Detention practices and legislation

56. All irregular migrants who arrived in 2013 and 2014 were channelled into the Italian asylum system, which is focused more on reception rather than detention. This government decision seriously affected the Italian reception system, which did not have the capacity to host the increasingly large number of irregular migrants arriving by sea. The Government consequently established the following policies and programmes.

57. In 2012, the Ministry of the Interior established a national working group to coordinate the progressive expansion of the centres under the System for the Protection of Asylum Seekers and Refugees (SPRAR), with a view to accommodating asylum seekers in small centres for shorter periods of time instead of keeping them in the large, often overcrowded reception centres for asylum seekers (CARAs). The working group was set up in response to the increase in the number of migrants arriving as a result of the Arab Spring.

58. Legislative Decree No. 18/2014 confirmed the mandate of the working group, which includes activities aimed at improving the national reception system and establishing an integration plan for the beneficiaries of international protection. The working group includes representatives of UNHCR and civil society organizations.

59. In recognition of the rise in numbers of irregular arrivals by sea, in 2013 the Ministry of the Interior issued decrees in which it envisioned increasing the capacity of SPRAR centres to 20,000 places between 2014 and 2016. As at February 2015 the system's capacity had grown to 20,956 places.

60. Decree-Law No. 119/2014 sets out new procedures for gaining access to international protection. Among other things, the law increased from 10 to 20 the number of territorial commissions tasked with analysing asylum claims,[2] and provided for the possibility of establishing up to 30 additional commissions. To date there are 40 commissions. Additionally, the Decree-Law allows the Ministry of the Interior to take exceptional measures to simplify the procedure applied by the commissions should the

[2] Commissions are composed of two officials from the Ministry of the Interior, one representative of the local authorities and one representative of UNHCR.

number of claims increase considerably; establish new standards for the composition and the competence of the commissions; increase the budget allocated to the reception of asylum seekers and migrants arriving by sea; and provide for tax reductions for local authorities involved in providing assistance for asylum seekers and migrants arriving by sea.

61. Law No. 161/2014 reduced the maximum time limit for detention of irregular migrants in identification and expulsion centres from 18 months to a strict limit of 3 months. The new maximum is reduced to 30 days if the irregular migrant has already spent 3 months or more in prison. In his previous report the Special Rapporteur had criticized the country's practice of lengthy detention and consequently welcomes this reform. Such developments help to protect the human rights of migrants in Italy.

B. Types of accommodation

62. The reception system for irregular migrants and asylum seekers is complex and includes a number of different structures.

1. First reception centres

63. First accommodation centres accommodate large numbers of irregular migrants and generally offer basic assistance, including food, accommodation, clothing, some information, legal services, first aid and emergency treatment. Upon arrival, irregular migrants may be placed temporarily in reception centres for migrants (CDAs),[3] which provide short-term accommodation, or in first assistance and reception centres (CSPAs),[4] depending on what is locally available. Currently 10 CDAs and 4 CPSAs are operating. In April 2014, in response to the increase in arrivals, centres for extraordinary reception were established as open centres that host people for up to six months. Those who arrive by sea are taken first to CPSAs and then to either a centre for extraordinary reception or a CARA.

2. Reception centres for asylum seekers

64. CARAs are longer-term accommodation facilities for asylum seekers. Article 20 of Legislative Decree No. 25/2008 stipulates that asylum seekers should be accommodated in CARAs for identification reasons. However, in practice, many are placed in such centres owing to a lack of places in other centres.

65. SPRAR centres also offer longer term accommodation. Such centres, which were established in 2002, are managed by local authorities through the National Association of Italian Municipalities and in cooperation with NGOs (non-governmental organizations) and are funded by the Ministry of the Interior. They offer several services aimed at integrating asylum seekers and refugees into Italian society. Unlike the other types of reception centre, which host significant numbers of migrants at any one time, SPRAR centres are small to medium size, better tailored to individual needs and better equipped to assist in local integration. There are currently 456 such centres.

3. Accommodation for Dublin returnees

66. Temporary reception centres have been established to host migrants transferred to Italy on the basis of the Dublin regulations. Under those systems accommodation is provided until the migrant's legal situation is defined; if a migrant belongs to a vulnerable

[3] This type of centre was created in 1995.

[4] This type of centre was created in 2006.

category, an alternative facility is found. The Ministry of the Interior, through the European Refugee Fund, has financed these temporary reception facilities. Currently 13 centres for the reception of Dublin returnees are operating; of those, 7 are designated for vulnerable persons. There are four centres in Rome, three in the province of Milan, two in Venice, two in Bologna and two in Bari; all together they can accommodate a total of 572 Dublin returnees.

C. Access to reception centres

67. In accordance with Legislative Decree No. 140/2005 of 30 May 2005, asylum seekers who lack the financial resources to ensure an adequate standard of living for themselves and their family, in terms of health and subsistence, can present a reception request when lodging their asylum claim. To do so, an asylum seeker must fill in an ad hoc declaration of destitution when filing the asylum application at the immigration office of the police (Questura).

68. The Special Rapporteur noted that the Legislative Decree did not provide a definition of "adequate standard of living and subsistence" and did not envisage specific financial support for different categories of migrants according to identified vulnerability, such as people with special needs.

Challenges to gaining access to reception centres

69. Irregular migrants and asylum seekers face a number of challenges in gaining access to reception centres in Italy.

70. First, relevant law stipulates that access to reception centres is to be provided from the moment of the presentation of the asylum request and the fingerprinting. In practice, however, asylum seekers may gain access to accommodation centres only after formal registration. The waiting times between the fingerprinting and registration differ among the police immigration offices. Depending on, among other things, the number of asylum applications, the waiting period can be several months. Consequently, asylum seekers must find alternative temporary accommodation and, if they lack economic resources, must either resort to friends, find emergency facilities or sleep on the streets.

71. Second, there are capacity issues. Given the surge in the numbers of asylum seekers, the Italian reception system does not have sufficient capacity to provide adequate reception services in all cases. In addition, owing to a shortage of Prefecture (local government office) staff and of cultural mediators and interpreters, not all accommodation requests can be assessed and processed in a timely manner. Reception requests are transmitted by the Questura to the Prefecture, which checks the availability of places in SPRAR centres and CARAs. If those are full, the Prefecture is obligated by law to grant a financial allowance until accommodation is located. In practice, it will still send asylum seekers to one of the reception centres, resulting in overcrowding and a deterioration of living conditions. A partial response to the limitations in capacity is the enlargement of the network of SPRAR centres, as mentioned above.

72. A related obstacle is the length of the asylum procedure, including the appeal phase, which leads to asylum seekers staying for long periods in CARAs and SPRAR centres, thus creating difficulties in guaranteeing that places will be made available for new asylum seekers.

73. Lastly, there can also be confusion among migrants and asylum seekers as to how to access accommodation. In large cities, such as Rome, there is a lack of information on how to submit to the Questura a request for accommodation.

74. These barriers can have serious consequences in relation to the human rights of migrants. Asylum seekers who have neither access to reception centres nor a financial allowance are obliged to live in the self-organized settlements that have flourished in metropolitan areas. These settlements are usually overcrowded and have terrible living conditions. One example is Salam Palace, an abandoned university building in a southern suburb of Rome, occupied by about 800 irregular migrants from the Horn of Africa. These settlements, and other precarious forms of accommodation, including living on the street, impede the enjoyment by migrants and asylum seekers of their economic and social rights, as well as their integration into society.

D. Conditions of reception centres

75. The issue of inadequate living conditions of asylum seekers in Italy has been gaining more attention from other European Union member States, owing to the rising number of appeals filed before the European Court of Human Rights by asylum seekers against their transfer to Italy on the basis of the Dublin regulation (see, for example, the case of *Tarakhel* v. *Switzerland*).

76. Owing to the limited duration of the follow-up visit, the Special Rapporteur was unable to visit detention and reception centres. However, he received, from various stakeholders, the information below describing the services and conditions of those facilities. Reception conditions vary to a significant degree among different types of accommodation and also within the same type of accommodation. Therefore it is difficult to gain a full picture of and reliable information for each reception centre.

77. CARAs do not all offer the same reception services. The quality of assistance varies between facilities, and sometimes fails to meet adequate standards. Areas of concern include the provision of legal and psychosocial assistance; inadequate identification, referral and care provided to vulnerable individuals owing to low levels of coordination among stakeholders; lack of capacity for necessary logistical follow-up; and unsystematic monitoring of reception conditions by the relevant authorities, resulting in complaints not being unaddressed.

78. CARAs are reportedly often overcrowded; accordingly, the quality of the accommodation services offered is not equivalent to those of the SPRAR centres or other reception facilities of a smaller size, and can be highly variable among CARAS themselves. Depending on the CARA, and to differing extents, overcrowding can exacerbate problems relating to insufficient food; a lack of sufficient sanitation facilities; limited space available for assistance, legal advice and socialization; the physical inadequacy of the facilities; the remoteness of the centres and their isolation from the community; and difficulties in gaining access to appropriate information.

79. In order to ensure the proper monitoring of reception facilities, the Senate Commission for Human Rights issued a resolution in March 2014 asking the Government to review the mechanisms for the outsourcing of the management of all identification and expulsion centres.[5] The Commission recommended that a single public entity be appointed for the management of all centres at the national level.[6] In addition, on 17 November 2014 the Chamber of Deputies established an inquiry commission to monitor and assess CARAs and CDAs and the detention conditions of migrants held in identification and expulsion

[5] Senate Commission for Human Rights, "Rapporto sui centri di identificazione ed espulsione in Italia" (2014), p. 32; see also p. 143.

[6] Ibid., p. 32.

centres, as well as to investigate the outsourcing mechanisms for the management of the centres, which often lack transparency. While the Special Rapporteur welcomes efforts to standardize and improve reception centre conditions, it is important that Italy ensures the full and effective implementation of those changes.

E. Length of stay in reception centres

80. The maximum stay in a CARA is 35 days, or 20 days for asylum seekers without travel or identity documents and those who had false or counterfeited documents. However, the actual stay has been systematically extended to six months or more, since the asylum procedure takes several months and the asylum seeker has the right to stay in the centre during the appeal stage.

81. Depending on the availability of places, the urgency of the case and the vulnerability of the person, asylum seekers can also be referred to SPRAR centres, where typically they stay for up to 12 months.

82. A number of provisions govern access to SPRAR centres by migrants who exercise their right to work within Italy. If a decision on the asylum request is not adopted within six months after the submission of the request, the asylum seeker receives a new six-month residence permit allowing him to work until the asylum procedure is completed. Asylum seekers who work may continue to benefit from SPRAR accommodation provided that they contribute financially. Those who lodge an appeal against a negative decision on their asylum application are allowed to remain on the national territory and have access to accommodation in a SPRAR centre only if they are not allowed to work or their physical condition prevents them from working.

83. As mentioned earlier, the Special Rapporteur welcomes the new law that limits detention to a period of 90 days and looks forward to its successful implementation.

F. Revocation of the provision of accommodation in reception centres

84. In accordance with Legislative Decree No. 140/2005, the Prefect of the province where the accommodation centre is placed can decide on an individual basis to revoke the provision of accommodation to a migrant on a number of grounds, including failure to notify the Prefecture before leaving a centre, the lodging of a previous asylum claim in Italy and a serious violation of a centre's internal rules.

85. By law, asylum seekers may, with the benefit of free legal aid, lodge an appeal before the Administrative Regional Tribunal against the decision of the Prefect to discontinue the provision of accommodation in a centre. In practice, appeals are rarely lodged, because asylum seekers who do not present themselves at the centres or leave the centres after their arrival have usually left to enter another European Union member State.

G. Access to reception centres by third parties

86. Lawyers, international organizations, the asylum seeker's family members, Italian citizens and NGOs need prior permission from the Prefecture to enter CARAs; this is not required for SPRAR centres. The Special Rapporteur urges that access to all reception centres be facilitated for all stakeholders.

H. Freedom of movement

87. Italian legislation does not establish specific limits on the freedom of movement of asylum seekers. Nevertheless, it does allow the competent Prefect to delimit a specific place of residence or a geographic area where asylum seekers may circulate freely.

88. To the Special Rapporteur's knowledge, this provision has never been applied. The freedom of movement of migrants can, however, be affected by the fact that it is not possible to leave the reception centre temporarily, for example to visit relatives, without prior authorization. If a person leaves a centre without permission or does not return within the period of time agreed upon with the management body, that person cannot be readmitted to the same centre.

I. Special categories of detainees

1. Vulnerable groups

89. Article 8 (1) of Legislative Decree 140/2005 stipulates that any accommodation provided should take into account the special needs of the asylum seekers and their family members, in particular those who are vulnerable, such as children, disabled persons, elderly people, pregnant women, single parents with minor children and persons who have been subjected to torture, rape or other forms of psychological, physical or sexual violence. It also stipulates that the managers of reception centres are to provide adequate psychological support in order to address the special needs of vulnerable asylum seekers. However, special needs assessment is not always carried out systematically and in some cases the required facilities and services cannot be provided. In addition, Legislative Decree 140/2005 specifies that asylum seekers, wherever possible, are to be accommodated in structures that ensure the protection of family unity. Sometimes a father is accommodated in a wing for single men and his wife and children are placed in a separate wing for women or single parents with children.

2. Minors

90. Italy still lacks an adequate multidisciplinary age determination procedure, which is necessary to ensure that children are treated as such and are granted forms of protection tailored to their specific vulnerabilities and needs. The Special Rapporteur notes that the current emphasis on age determination, which currently includes wrist X-rays and body examination and the application of the benefit of the doubt for children who manifestly appear to be under 18, seems a cautious approach that favours protection over expediency. The test will be whether it is possible to sustain the political resolve necessary to implement the policy over the long term. Particularly worrying is the situation of unaccompanied minors who seem to lack adequate protection. All unaccompanied minors are provided with a legally appointed guardian. However, the guardian, who is often the Mayor, the Councillor of Social Affairs or a municipal official, can be responsible for over 60 minors at any one time. The Special Rapporteur urges Italian authorities to develop a more structured system of guardianship for unaccompanied minors. It is important for their protection and development that the guardian be appointed quickly, have the necessary expertise, capacity, experience and competence, be appropriately supported with the necessary resources, and not be responsible for an excessive number of minors. The best interest of the child depends on the guardian being able to make the best and quickest decisions possible on all matters of concern to the child.

91. Another issue of concern is that young people in reception centres are not always engaged in any educational or vocational activity. Consequently, they sometimes engage in

criminal activities, such as drug trafficking and prostitution, to earn money. Those arrested and found guilty of such crimes serve their sentences in a juvenile penitentiary; once they are 18, they are returned to a reception centre, if they have completed their sentence, or sent to an adult prison to serve out the rest of their sentence. The Special Rapporteur was informed that new legislation on providing improved reception centres for unaccompanied minors, including management aspects, will be developed. The resources for the centres will no longer come from strained municipal budgets, but rather from a central budget. Regarding unaccompanied minors who arrive in Italy but do not want to stay, Italy should establish a process with other countries that helps minors reach, as quickly as possible, their preferred country of destination, thereby helping them avoid transit through countries where conditions are dangerous or being led into criminal activity.

92. The Special Rapporteur learned that Italy will be adopting a bill to better protect migrant children and assist in their integration. The idea of offering such children integration avenues through language training, schooling and professional training programmes is promising, as most young people will adapt quickly to their new environment and become productive citizens. The Special Rapporteur was also informed of several bills designed to allow easier access to Italian citizenship for migrants born in Italy and for young people educated in Italy, which is a positive step towards the integration of migrant children.

VI. Cross-cutting concerns

A. Access to justice

93. The Special Rapporteur remains concerned that barriers to access to justice exist at many different stages of the processes of migration to Italy.

94. Issues around access to justice can sometimes arise at the border. Some migrants have reportedly been returned upon apprehension when entering irregularly, commonly known as push-back; others have been found at the border and admitted provisionally to Italian territory for reasons of emergency health-care assistance, but were then returned, which is known as deferred push-back. Such practices may exclude migrants from the procedural guarantees linked to the ordinary expulsion procedure, thereby denying migrants the opportunity to submit an asylum claim.

95. The Special Rapporteur remains concerned about access to justice for migrants who, after arriving in Italy, apply for asylum while in detention. When a migrant who is detained in an identification and expulsion centre makes an application for asylum, the expulsion order is suspended, pending the evaluation of the application. However, the Special Rapporteur learned that, despite this safeguard, some migrants detained in identification and expulsion centre had been deported, even though they had previously expressed their desire to make an asylum claim.

96. In addition, migrants are also often not able to obtain legal advice before submitting their asylum claim. This creates problems later, when legitimate cases are rejected owing to a lack of information on how best to submit the claim. Some migrants are unaware that some of their experiences amount to torture, making them eligible for an asylum claim. In other cases, migrants are given the information they need to submit a claim, but often may be too traumatized to respond effectively. Consequently, although the asylum application must be submitted immediately upon arrival in Italy, often victims of violence are unable to report immediately the violence they experienced. They only learn of the importance of such reports after their claim has been rejected; some, if they are fortunate, are able to then submit such information when they appeal.

97. Migrants who receive an expulsion order risk being returned, owing to the lack of automatic suspensive effect of appeals against such orders and the practical difficulties of lodging appeals — the procedure does not allow sufficient time to contact a lawyer, or even an interpreter. Moreover, the judges deciding whether expulsion and detention orders should be extended are justices of the peace without any particular expertise in immigration issues. The ability of these lay judges to review the detention orders on the merits seems to be limited; rather, the confirmation of the detention orders is perceived to be, in many cases, based on mere formalities, thus resulting in a lack of real judicial control over the order. The Special Rapporteur strongly urges the Government to streamline expulsion and detention orders so as to ensure that the relevant procedures work well to protect those in need and allow for improved access to justice.

98. The Special Rapporteur remains concerned that the appeal system for expulsion and detention orders is unnecessarily complex, requiring two parallel appeal procedures in the city where the order was made, which often requires the hiring of a local lawyer. This can be very difficult for migrants to navigate, as they may not speak the language and may have limited access to information in detention facilities; often, their access to funds or legal advice is restricted. Even if the expulsion and detention orders were issued in the same city, the bifurcation of the process still requires two separate proceedings.

99. Migrants within Italy still have problems obtaining competent and reliable legal representation. Some are able to obtain legal advice and support from NGOs. Others are able to engage private lawyers, but remain easy targets for dishonest lawyers who wish to make extra money. The Special Rapporteur urges the Italian authorities to work with bar associations to ensure that migrants are able to gain access to competent legal representation.

B. Labour exploitation

100. Legislative Decree No. 109/2012, which transposed into national law Directive 2009/52/EC of the European Parliament and of the Council on sanctions against employers, has yet to be fully implemented. Employers continue to exploit migrants physically and financially without fear of sanctions.

101. Labour inspectors should respect and protect the human rights of workers, irrespective of their status, and certainly should not have immigration enforcement powers, which only serves to deter migrants from reporting exploitation because they fear being arrested, detained and deported.

C. Xenophobic and discriminatory acts against migrants

102. The Special Rapporteur learned that migrants continued to be victims of violent attacks and murders in recent years, with both mob violence and individual attacks reported. At the same time, the number of prosecutions for racially motivated attacks is low, owing to a lack of general awareness about the law and insufficient training for law enforcement and judicial personnel.

103. The Special Rapporteur remains concerned about the terminology and discourse around migration used by some government institutions and agencies. The term clandestine remains in widespread use, in particular by the media. Such language further legitimizes a discourse of exclusion and criminalization of migration, which then entrenches attitudes of discrimination and xenophobia and creates an environment in which the exploitation of irregular migrants is perceived as legitimate.

104. Xenophobic and racist discourse, including by elected officials and other public figures, contributes to a climate of impunity and intolerance. Law No. 654/1975 of 13 October 1975 criminalized incitement to racial hatred. However, in practice, even Italian politicians found guilty of such crimes were not penalized for their conduct.

VII. Recommendations

A. Recommendations to the Government

1. Normative and institutional framework for the protection of the human rights of migrants

105. **The Special Rapporteur recommends that the Government:**

(a) Develop a comprehensive national system of data collection, analysis and dissemination regarding immigration policies and practices, which should be used as a foundation for rights-based policymaking on migration. Data relating to migrants in detention and deportations should also be included;

(b) Establish a national human rights institution in line with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), and ensure that it is both functionally and financially independent of the Government and vested with the authority to investigate all issues relating to human rights, including those of migrants, regardless of their administrative status;

(c) Ensure the establishment of a fully independent national preventive mechanism, in accordance with the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, with a mandate to visit all places where migrants may be deprived of their liberty;

(d) Ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

2. Border management

106. **The Special Rapporteur recommends that the Government:**

(a) Fully respect the human rights of migrants when implementing readmission agreements;

(b) Ensure that readmission and cooperation agreements aimed at, inter alia, combating irregular migration include safeguards for the full respect of the human rights of migrants and ensure the adequate protection of vulnerable migrants, including asylum seekers and refugees, in particular with regard to the principle of non-refoulement;

(c) Establish a comprehensive mechanism for the identification of unaccompanied minors that includes not only medical exams but also a psychosocial and cultural approach, in order to best identify specific protection measures in the best interests of each child.

3. Bilateral agreements

107. **The Special Rapporteur recommends that the Government:**

(a) Ensure that all bilateral and multilateral agreements on migration issues are negotiated and made publicly available in full transparency, with clear human rights protections integrated at all stages;

(b) Eliminate the practice of informal automatic push-backs to Greece;

(c) Ensure that readmission agreements, such as those with Egypt and Tunisia, adequately protect the human rights of migrants and ensure proper and systematic individual screening for protection concerns, as well as guarantee full access by international organizations and civil society organizations, including Praesidium project members, at landing sites and to all temporary and permanent reception centres. The Praesidium project should be formalized.

4. Detention and reception

108. **The Special Rapporteur recommends that the Government:**

(a) Ensure that migrants are detained only when they present a danger to themselves or others or a demonstrated risk of absconding from future proceedings, and always ensure that detention is used for the shortest time possible and as a measure of last resort. Non-custodial alternatives to detention should be used in all other cases;

(b) Improve and standardize the management of reception centres for irregular migrants, drawing from the best practices observed in the existing network of reception centres and in other facilities in Europe and around the world, and in accordance with relevant standards set out in international human rights law;

(c) Ensure that all detained migrants have access to proper medical care, interpreters, adequate food and clothing, hygienic conditions, adequate space to move around and outdoor exercise;

(d) Systematically inform detained migrants in writing, in a language they understand, of the reason for their detention, its duration and their rights to access to a lawyer, to promptly challenge their detention and to seek asylum;

(e) Implement legislation concerning the early identification of migrant prisoners to avoid further detention;

(f) Ensure that all migrants deprived of their liberty are able to promptly and easily contact their family, consular services and a lawyer, which should be free of charge;

(g) Guarantee full access by international organizations, including UNHCR and the International Organization for Migration, as well as civil society organizations, doctors, journalists and lawyers, to all areas where migrants are held or detained, at all stages of the procedure, including in reception centres;

(h) Develop comprehensive human rights training programmes for all staff who work in reception centres;

(i) Coordinate and simplify all the different reception centres to avoid confusion and duplication of efforts, especially where family members are processed under different procedures;

(j) Ensure the monitoring of reception centres so that they are all brought to the same standards.

5. Access to justice

109. The Special Rapporteur recommends that the Government:

(a) Ensure full and proper access to justice for all detainees, including through a more accountable system for lodging complaints within reception centres;

(b) Ensure that all detained persons who claim protection concerns are, without delay, informed adequately of their right to seek asylum, have access to the procedure for registering asylum claims and can easily communicate with UNHCR, lawyers and civil society organizations;

(c) Ensure that all decision makers within the territorial commissions are trained adequately in asylum and human rights law so that they can appropriately determine asylum claims;

(d) Establish a fairer and simpler system for migrant detainees to be able to challenge expulsion and detention orders, and ensure that the appeal proceedings are based on the merits and validation of the detention;

(e) Provide justices of the peace with training on international human rights law and international refugee law;

(f) Ensure that migrants awaiting a judicial decision on their request to suspend repatriation procedures, following a negative decision made by the competent territorial commission, are not repatriated before the decision on suspension is made.

6. Cross-cutting concerns

110. The Special Rapporteur recommends that the Government:

(a) Provide access to basic services to everyone living on Italian territory, regardless of their immigration status, in accordance with international human rights standards;

(b) Take all necessary measures to execute the judgements of the European Court of Human Rights in the Hirsi and Sharifi cases;

(c) Fully implement the directive on sanctioning employers, including by developing comprehensive measures to punish Italian employers who abuse the vulnerability of migrants by paying them exploitative wages;

(d) Effectively penalize landlords who house migrants in inappropriate and unsanitary conditions;

(e) Use terminology that does not reinforce prejudices against migrants, and refrain from using charged expressions such as "illegal migrant" or "clandestine"; take a leadership role in developing a political discourse that stresses the necessary protection of human rights for all, including migrants, regardless of their administrative status;

(f) Support, both technically and financially, civil society organizations that offer services and support to migrants regardless of their administrative status, and especially those that help migrants defend their rights;

(g) Develop and implement a national diversity and integration programme.

B. Recommendations to the European Union

111. **The Special Rapporteur recommends that the European Union:**

(a) Ensure that European Union frameworks do not contribute to the restriction of human rights protections of migrants in Italy;

(b) Ensure that European cooperation frameworks with partner countries do not result in the externalization of border controls without adequate human rights guarantees in favour of migrants being implemented, with the support of European institutions, in such partner countries;

(c) Establish a programme for the quick relocation of asylum seekers across Europe, according to a distribution key and taking into account the wishes of the asylum seekers themselves, the possibilities of family reunification and humanitarian considerations that are essential to an equitable redistribution of responsibilities among States. If well managed, such a system would incentivize asylum seekers to register in the first European Union country of entry. It would encourage asylum seekers not to use the evasion tactics that are now systematically employed to avoid their identification and the application of the Dublin regulations;

(d) Accept the inevitability of increased migration to the European Union region. The European Union and its member States therefore need to develop channels for regular migration into Europe;

(e) Ensure a well-managed reception capacity that can sustain the expected seasonal migration peaks. Fully accept the shared responsibility among all member States; for example, some States could offer part of their reception capacity to other front-line States experiencing migration peaks;

112. **European Union member States must strive to create a common asylum policy, by embracing two mechanisms. First, States should recognize each other's refugee status determination decisions, thus ensuring the mobility of refugees throughout the territory of the European Union. Second, in order to gain confidence in each other's refugee status determination systems, they should create a roster of decision makers from each European Union member State, at first decision and at appeals levels, for the joint screening of asylum applications. With the help of the European Asylum Support Office and UNHCR, this would allow for the sharing of expertise, experience, good practices and lessons learned. It would also help create trust in the capacity of each national system through the knowledge that it is grounded on a common knowledge base of country-of-origin information, to be developed around a common interpretation of the legal criteria for protection and to be responsive to the same factors as considered in other systems.**

113. **The Special Rapporteur also recommends that the European Union:**

(a) Ensure that the cooperation with FRONTEX takes full account of the human rights of migrants, rather than focusing only on security-related aspects;

(b) Promote family reunification between unaccompanied minors, both asylum seekers and other migrants, and their relatives who are regularly resident in other European Union member States;

(c) Ensure the full implementation of responsibility sharing among European Union member States in the management of its external borders, taking into full account the geographical position of Italy, which renders its coastlines particularly exposed to migration flows. This should include allowing asylum seekers the freedom of movement within the European Union and attributing European Union support funds to the country where asylum seekers establish themselves.

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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report by the Special Rapporteur on the human rights of migrants, François Crépeau

Addendum

Mission to Malta (6–10 December 2014)*

Summary

The Special Rapporteur on the human rights of migrants conducted a visit to Malta from 6 to 10 December 2014. He held consultations with officials of the Government of Malta, migrants and representatives of civil society organizations and international organizations.

Malta must develop programmes to cope with the unprecedented number of migrants and asylum seekers arriving by boat. The Special Rapporteur recommends that such programmes should offer immediate assistance, legal safeguards, and alternatives to detention, as well as integration programmes for migrants and asylum seekers who arrive irregularly. The European Union member States must collectively provide technical, financial and human resources to support front-line States such as Malta in developing comprehensive, rights-based migration policy.

* The summary of the present report is circulated in all official languages. The report itself, which is annexed to the summary, is circulated in the language of submission only.

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Annex

[English only]

Report by the Special Rapporteur on the human rights of migrants, François Crépeau, on his mission to Malta (6–10 December 2014)

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I. Introduction

1. From 6 to 10 December 2014, the Special Rapporteur on the human rights of migrants conducted an official visit to Malta. The visit was undertaken in follow-up to the Special Rapporteur's 2012 year-long study on the management of the external borders of the European Union. Following his study, the Special Rapporteur reaffirmed the importance of addressing irregular border crossings, recalling that it was in the context of such crossings that the most egregious human rights abuses appear to take place (see A/HRC/23/46, para. 20). The increased numbers of migrant crossings and deaths in the Mediterranean Sea and the response by European Union member States prompted the Special Rapporteur to revisit the issue of European Union border management. In addition, in September 2014 the Human Rights Council, through presidential statement 27/3, requested the Special Rapporteur, among others, to pay particular attention to the protection of migrants at sea. Consequently, the present report is focused on external border control, and does not provide a comprehensive overview of the broader human rights situation of all migrants in Malta. The report should be read in conjunction with the Special Rapporteur's reports on Italy (A/HRC/29/46/Add.2) and the European Union (A/HRC/29/46).

2. During his mission, the Special Rapporteur visited Valletta, where he was able to meet with representatives of the Ministry for Foreign Affairs, the Ministry for Home Affairs and National Security, the Ministry for Justice, Culture and Local Government, the Ministry for Family and Social Solidarity, the Ministry for Social Dialogue, Consumer Affairs and Civil Liberties and the Department of Industrial and Employment Relations. He also met with representatives from the Office of the United Nations High Commissioner for Refugees (UNHCR) and from the International Organization for Migration (IOM) and many irregular migrants and asylum seekers.

3. The Special Rapporteur met with irregular migrants and refugees in the Hal Safi detention centre and the Santa Venera open centre for unaccompanied minors, and with asylum seekers in Balzan and Marsa. He also consulted with numerous civil society organizations, lawyers and academics working in the field of migration.

4. The Special Rapporteur expresses his sincere appreciation to the Government of Malta for the support provided throughout the visit. He further thanks UNHCR for its excellent support and assistance.

II. Background on Malta and migration: a brief overview

5. Irregular migrants who arrive in Malta, having fled their home countries, have usually spent time in Libya or Egypt, where some were subjected to arbitrary arrests, indefinite immigration detention, torture, ill-treatment and racism.

6. The boat trips that follow these hardships are perilous, involving basic, often unseaworthy vessels with limited navigation systems and insufficient food, water and fuel. Migrants have reported being subjected to physical violence at the hands of smugglers, and women have described being victims of sexual violence during the boat journey. The crossing from Libya to Malta takes, on average, 1 to 3 days but can take significantly longer, depending on the boat and weather conditions. Many boats capsize or go into distress. In 2014, UNHCR reported that over 3,000 people had died or gone missing while attempting to cross the Mediterranean to Europe.

7. A large number of arrivals have been Syrians and Eritreans. This suggests that ongoing situations of violence and insecurity and economic hardship are the key drivers of migration using the central Mediterranean route. Another factor is the "sealing" of land

borders, such as those in Bulgaria, Greece and Turkey. For many irregular migrants, their only option is to make the dangerous sea journey to Italy or Malta.

8. All irregular migrants who arrive in Malta are mandatorily detained. In practice this approach has little deterrent effect, given that migrants often cannot control their destination. Some who arrive in Malta do not necessarily want to stop there. In many cases, migrants are on boats without navigation systems and may wish to move on to mainland Europe.

9. According to UNHCR, over 560 people arrived in Malta in 2014. About 30 per cent of arrivals declared themselves to be children, and many of those were unaccompanied. Malta received relatively few migrants, owing to the Italian search and rescue operation Mare Nostrum, which rescued many migrants at sea and disembarked them in Italy. However, with the phasing out of Mare Nostrum, Malta is likely to see a considerable increase in arrivals in 2015. Given the profile of the majority of migrants and asylum seekers arriving in Malta and the persistence of key push and pull factors, migration is not likely to decrease in the near future.

10. According to UNHCR, European Union member States received on average 3.5 asylum seekers per 1,000 inhabitants during the period 2010–2014. Cyprus, Hungary and Malta received, on average, more asylum seekers per 1,000 inhabitants than the European Union member States did as a whole. When comparing the number of asylum seekers to the size of the national population, between 2010 and 2014 Sweden received, on average, the highest number of asylum seekers compared to its national population; Malta ranked second.

III. Normative and institutional framework on migration and border management

A. International framework

11. At the time of the visit, Malta was party to seven of the nine core international human rights treaties. In March 2015 it ratified the International Convention for the Protection of All Persons from Enforced Disappearance. It has not signed or ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. It has yet to ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women and the Optional Protocol to the Convention on the Rights of the Child on a communications procedure.

12. Malta has also ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime; the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime; and the 1951 Convention relating to the Status of Refugees and its 1967 Protocol. It has not signed the 1954 Convention relating to the Status of Stateless Persons or the 1961 Convention on the Reduction of Statelessness.

13. Malta has signed the fundamental conventions of the International Labour Organization (ILO).[1] It has not signed the ILO Migration for Employment Convention

[1] Forced Labour Convention, 1930 (No. 29); Abolition of Forced Labour Convention, 1957 (No. 105);

(Revised), 1949 (No. 97) or the ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143).

14. Malta has ratified the United Nations Convention on the Law of the Sea, which establishes the structure of maritime territory and the rights and obligations of States. It has acceded to the International Convention on Maritime Search and Rescue, which establishes State duties in relation to establishing search and rescue services, and to the International Convention for the Safety of Life at Sea, which builds on the norms that provide that States and other actors have an explicit duty to assist those in distress at sea.

B. Regional framework

15. As member of the European Union and the Council of Europe, Malta is part of a regional system on migration and is subject to the jurisdiction of a number of additional legal instruments.

16. The European Union acquis on migration and asylum is applicable to Malta as a European Union member State, and Malta has transposed many relevant European Union directives into national legislation. Malta is also party to the Schengen Agreement, which provided for the strengthening of external border controls and eliminated internal border controls. Furthermore, as a European Union member State, Malta has an obligation to respect the Charter of Fundamental Rights of the European Union when implementing European Union law.

17. Malta joined the Council of Europe in 1965 and is party to the European Social Charter. It has not signed the European Convention on the Legal Status of Migrant Workers.

18. Malta is also party to the Convention for the Protection of Human Rights and Fundamental Freedoms and as such is under the jurisdiction of the European Court of Human Rights. The Court has issued a number of rulings on the human rights of migrants with regard to Malta. In 2013, the Court in *Musa* v. *Malta* ruled that the 17-month administrative detention of the applicant pending his asylum application and following its determination was arbitrary and in breach of article 5 (1) of the Convention. The Court further held that Maltese authorities had breached the applicant's right to an effective and speedy remedy to challenge the lawfulness of his detention under article 5 (4).

19. The Court has also ruled on cases challenging the Dublin regulations. Most recently, in *Sharifi and Others* v. *Italy and Greece*, the Court clarified its position, stating that the Dublin system, which serves to determine which European Union member State is responsible for examining an asylum application lodged in one of the European Union member States by a third-country national, must be applied in a manner compatible with the Convention: no form of collective and indiscriminate returns can be justified by reference to that system, and it is for the State carrying out the return to ensure that the destination country offers sufficient guarantees in the application of its asylum policy to prevent the person concerned from being removed to his country of origin without an assessment of the risks faced.

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); Right to Organise and Collective Bargaining Convention, 1949 (No. 98); Equal Remuneration Convention, 1951 (No. 100); Discrimination (Employment and Occupation) Convention, 1958 (No. 111); Minimum Age Convention, 1973 (No. 138); Worst Forms of Child Labour Convention, 1999 (No. 182).

C. National legal, institutional and policy framework

1. Legal framework

20. Malta has a number of immigration regulations and standards that incorporate international and regional standards into national law. The most significant pieces of legislation are the Refugees Act of 2000 and the Immigration Act of 1970, discussed below.

21. The Immigration Act forms the legal basis for the country's policy of mandatory detention in relation to irregular migrants. Under article 10, persons refused entry to the country may be placed temporarily on land or shore and detained until their departure. These people are considered not to have formally entered the country. Article 14 builds upon this provision setting out mandatory pre-removal detention.

22. The Common Standards and Procedures for Returning Illegally Staying Third-Country Nationals Regulations of 2011 transpose Directive No. 2008/115/EC of the European Parliament and of the Council of the European Union into national law. Together with the Immigration Act, the Regulations govern the country's system of rights and procedures for expulsion and detention of undocumented third-country nationals.

23. The Refugees Act defines a refugee, sets process expectations, establishes a right of refugees to legal aid on the same basis as Maltese citizens and provides for the establishment of the Office of the Refugee Commissioner and the Refugee Appeals Board.

24. The Procedural Standards in Examining Applications for Refugee Status Regulations established by Legal Notice 243 of 2008, as amended by Legal Notice 161 of 2014, outlines the processes and procedures for assessing the protection claims of asylum seekers. These guidelines fall within the framework set by the Refugees Act.

25. Subsidiary legislation 420.06 of 22 November 2005 transposes into national law Council of the European Union Directive 2003/9/EC, which lays down minimum standards for the reception of asylum seekers in member States.

2. National institutions and policies

26. A number of Government departments and agencies, discussed below, have a role in developing and implementing the migration policies of Malta and related issues.

27. The Ministry for Home Affairs and National Security is responsible for the overall development of immigration and asylum policies. It coordinates operations in relation to irregular migration and asylum and manages a number of other agencies relevant to migration in its portfolio, including the Central Visa Unit, which issues visas, and the armed forces.

28. The Ministry for Social Dialogue, Consumer Affairs and Civil Liberties is responsible for the integration of migrants into Maltese communities. The inclusion of integration of migrants in the portfolio of the Ministry is a new development following the general elections in 2013 and the growing prominence of migration issues.

29. The Ministry for Education and Employment is responsible for all issues relating to labour market issues and migrants. It also implements a policy that allows for certain categories of migrants to apply for an exemption from the payment of tuition fees in State educational institutions.

30. The Ministry for Justice, Culture and Local Government is responsible for ensuring the full implementation of decisions of the European Court of Human Rights and legal aid.

31. According to article 13 (3) of the Refugees Act, unaccompanied minors under the age of 18 are protected with a care order under the Children and Young Persons (Care

Orders) Act. This gives the Minister for Family and Social Solidarity responsibility for care and custody and ensures, through an advisory board set-up, that a care plan for each minor is prepared, and that unaccompanied minors are protected and cared for on a psychosocial level. Unaccompanied minors are also provided with temporary humanitarian protection until the age of 18. A legal guardian is appointed for the purpose of the asylum determination interview.

32. The following bodies are under the Ministry for Home Affairs and National Security:

- The Agency for the Welfare of Asylum Seekers was established by subsidiary legislation 217.11 of 2009 to implement the national policy relating to the welfare of refugees.
- The Children and Young Persons Advisory Board assesses the conditions of unaccompanied minors and reports to the Agency for the Welfare of Asylum Seekers.
- The Detention Services agency supports border control by providing detention accommodation for irregular migrants while their claims to stay are considered or their removal is facilitated. Its mandate includes overseeing the operation of all closed accommodation centres, providing secure but humane accommodation for detained persons and maintaining a safe and secure environment.
- The Board of Visitors for Detained Persons was established by subsidiary legislation 217.08. The Board monitors the treatment of detainees and acts as the national preventive mechanism for the prevention of torture under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
- The Police Special Branch, Immigration Section, is responsible for the apprehension, investigation, identification and removal of illegally staying foreigners, and also has a role to play in border control, having officers at entry points, including airports and at ports and terminals in Valletta, Msida, Mgarr and Gozo.
- The Armed Forces of Malta conduct air and maritime border surveillance and play a key role in coordinating and undertaking search and rescue operations.
- The Office of the Refugee Commissioner was established by the Refugees Act. It is responsible for the enforcement of Dublin procedures and the determination of asylum and other protection visas in the first instance.

33. There are two appeal boards: one for asylum seekers and another for migrants, the mandates for which are set out in subsidiary legislation 420.04 of 15 February 2005, entitled "Refugee Appeals Board (Chambers) Rules" and subsidiary legislation 420.06. The boards review appeals to decisions on refugee and migration status.

34. The Refugees Appeals Board has a low appeal rate: 96.4 per cent of applications are rejected at the time of submission. The Refugee Appeals Board (Chambers) Rules governs the procedures of the Board.

35. A migrant detainee can currently challenge the duration but not the reasonableness of detention before the Immigration Appeals Board, in accordance with the Immigration Act. However, planned amendments to article 25A (10) of the Immigration Act would allow for a challenge against the issuance of a detention order. The hearings before the Immigration Appeals Board are conducted in a similar manner to those held before the national courts. Individuals may be assisted by a lawyer, evidence is heard by the Board and submissions are made by the parties. The appellant is also given the opportunity to

make oral or written submissions. It should also be noted that the members of the Board are part-time and enjoy security of tenure, with a view to ensuring the independence of the Board.

D. European Union influence on national laws, policies and institutions in the sphere of migration management and border control

1. Schengen system

36. Malta implemented the Schengen acquis in 2007, making the country a key point of entry into the European Union Schengen area. Membership in the Schengen area puts pressure on Malta to focus on the security-related aspects of irregular migration rather than the human rights of migrants.

37. Under the Schengen system, any irregular migrant who is registered in Malta will be returned to Malta, even if they move to another country within the European Union. The Special Rapporteur observes that, for undocumented and irregular migrants, this can create a situation where irregular migrants become stuck in Malta; in particular those without documents often become trapped in Malta, as they are unable to travel to other countries within the European Union or safely return home.

38. There are a number of European Union directives on reception of, asylum for and detention of migrants within member countries. The most prominent of those are discussed below.

2. Dublin III regulation

39. Following heavy criticism of the Dublin II regulation, including the greater pressure it put on front-line European Union member States, Regulation No. 604/2013 of the European Parliament and of the Council of the European Union (the Dublin III regulation) came into force on 1 January 2014. The new regulation provides enhanced safeguards for applicants for international protection in Europe, including a provision that stipulates that, while waiting for a decision on his or her appeal, a person has the right to remain in the country (a suspensive right of appeal), and a clause designed to prevent breaches of human rights whereby, a State is not permitted to transfer a person to another European Union member State if there is a risk that he or she would be subjected to inhuman and degrading treatment in that member States. This means that States will be obliged to undertake their own assessment of the situation rather than continue to apply the Dublin regulations on returning migrants, unless the European Court of Human Rights or the European Court of Justice take a decision to the contrary.

40. The Dublin III regulation introduces an early warning mechanism, which is aimed at making it easier to detect problems in a member State's asylum system so that the European Union Commission and the European Asylum Support Office can provide early assistance before the situation degenerates. The regulation contains an emphasis on respect for family life, including provisions to ensure that transfers under Dublin III facilitate family unity as much as possible. It also widens the definition of the family to benefit unaccompanied minors, who can now be reunited with grandparents, uncles or aunts living in a European Union member State. Additionally, during personal interviews, officials are required to inform applicants that they may provide information about family members in other European Union member States, which will be taken into account in the determination as to which State is responsible. The Dublin III regulation also provides for the production of a common information leaflet on Dublin and a specific leaflet for unaccompanied minors.

41. Despite the improvements within the Dublin system, the Special Rapporteur is concerned about a number of issues relating to how these regulations affect the human rights of migrants in Malta.

42. A key feature of the Dublin system is that, under Regulation No. 603/2013 of the European Union, migrants entering the European Union are fingerprinted to ensure that their asylum claim is processed in the correct member State in accordance with the system. If migrants attempt to enter another European Union member State, they are returned to where it has been deemed their application should be made — usually the first country of entry. Migrants often do not want to have their fingerprints taken because, as discussed above, they have plans to travel to other countries in Europe.

43. The Special Rapporteur learned that irregular migrants who arrive by boat to Malta sometimes refuse to be fingerprinted, making it difficult for border guards to effectively and systematically implement the Dublin system, especially when large groups refuse to be fingerprinted and photographed. There have been instances when a degree of force has been used. The Special Rapporteur observed that Malta should refrain from using any form of physical force against migrants who have not committed any crime, when implementing identification mechanisms, such as fingerprinting. Migrants are reluctant to comply with the identification mechanisms because of the consequences attached to such identification, in particular the inability to move beyond the European country responsible for their entry and the prohibition on claiming asylum in the country of their choice. This is especially true as some European Union member States have made little use of the family reunification clause, the humanitarian clause and the sovereignty clause, which could enhance the mobility of migrants throughout Europe.

44. Additionally, the Dublin Unit is understaffed and cannot deal efficiently with Dublin cases or be effective in making the most of provisions such as those of family reunification. The Special Rapporteur was also informed that the Dublin system remains a challenge for the Government because, despite Malta's small size as compared to other European Union member States, the country remains responsible for all those who arrive on its shores by boat. The Special Rapporteur observes that the Dublin system places extensive responsibility for migration control on front-line states such as Malta which have limited financial, technical and human resources to implement its procedures, especially at a time when irregular migration is at its highest.

45. The Special Rapporteur observes that, in effect, the Dublin logic is already buckling, with the realization that the return of migrants to the front-line countries of Europe constitutes a punishment for both the migrant and the front-line countries to which they return: it is unsustainable in the long term. Instead of ineffective prohibitions, repressive policies and lengthy procedures, Europe must deploy incentives for migrants to use legal procedures, including for family reunification, and ensure the mobility of those migrants throughout the common European territory, thus allowing them to live where they will find the best employment opportunities and integration conditions, as is already the case for European citizens.

3. Directive 2008/115/EC

46. Directive No. 2008/115/EC of the European Parliament and of the Council of the European Union covers, inter alia, the obligation to return irregular migrants, their treatment during expulsion proceedings, entry bans, procedural rights and the grounds and conditions for detention. It notably sets the maximum detention period for irregular migrants at 18 months. The Directive includes provisions that encourage European Union member States to explore alternatives to detention.

4. Directive 2003/9/EC

47. Council of the European Union Directive 2003/9/EC establishes minimum standards for the reception of asylum seekers and harmonizes conditions provided across European Union member States. It provides guarantees to asylum seekers, including: accommodation, food and clothing, in kind or in the form of a financial allowance; family unity; medical and psychological care; access to the education system for minor children and language courses to enable them to attend ordinary school; and rehabilitation programmes and post-traumatic counselling for victims of torture or violence. It also imposes on European Union member States a duty to inform asylum seekers of their rights and to allow for freedom of movement within the country.

IV. Border management

A. Rescue at sea

48. The Armed Forces of Malta coordinate all search and rescue operations in the Malta search and rescue region. This support varies from timely information sharing to the availability of aerial or naval assets. In addition, Italy has a search and rescue helicopter based and operating from Malta as part of the Italian military support mission in Malta. Malta also has formal search and rescue cooperation agreements with Greece, Italy, Libya and the United States of America, namely, the United States Navy and the United States Coast Guard forces in the Mediterranean. Malta also liaises with Tunisia, on an informal operational level, on search and rescue issues.

49. The Special Rapporteur was informed about the considerable impact of migration on the human and technical resources of the Armed Forces. Individuals spend extended hours on duty and at a much higher level of readiness than was the case in the past. The effect on the vessels operated by the Armed Forces has also been considerable, insofar as routine maintenance activities have to be conducted in compressed timelines and sometimes deferred owing to operational commitments.

50. Malta faces many challenges with regard to search and rescue, such as: having a vast search and rescue area relative to its size; overlap with the search and rescue zone of Italy, causing confusion regarding responsibilities and tension with Italy related to interfaces between their two search and rescue systems; a lack of support from other European Union member States in tackling the pressures within its search and rescue zone; inadequate management of the search and rescue zones by countries of origin, such as Libya; and confusion about where people rescued at sea should disembark. Reportedly, Malta has sometimes been unable to respond effectively to distress calls or has not allowed rescued migrants to disembark on Maltese territory. However, the Special Rapporteur emphasizes the extreme vulnerability of migrants at sea, and underlines the importance of Malta upholding its obligations under international law in relation to search and rescue.

51. The Special Rapporteur learned that the Armed Forces has updated its search and rescue software and programmes and has increased its training and its aerial and naval assets through projects co-financed by the European Union, which help in conducting rescue operations.

1. Merchant vessels

52. Private vessels cooperate with the Government and sometimes carry out the search and rescue. This is at their own financial cost, which can create disincentives to participate. In February 2015, the International Maritime Organization underlined that the support

provided to search and rescue operations by merchant vessels should remain exceptional, and that States should shoulder the main responsibility of fielding sufficient search and rescue capacity.

2. Migrant Offshore Aid Station

53. In April 2014, the Migrant Offshore Aid Station was established by private individuals as a response to the increasing numbers of deaths at sea. It is based in Malta and assists Rescue Coordination Centres in the Mediterranean to conduct search and rescue operations. In 2014, the Station saved 3,000 people. It is currently working with Médecins sans frontiers-Amsterdam to provide humanitarian support to people rescued.

B. Cooperation on border management

54. The European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX) supports Malta in managing its external borders and helps strengthen the country's search and rescue capacity through the provision of air assets and other vessels to enable the country to more easily carry out rescue operations safely at sea. Regulation 656/2014 of the European Parliament and of the Council on surveillance of the external sea borders in the context of operational cooperation coordinated by FRONTEX was adopted in 2014, aimed at resolving confusion arising from diverging national interpretations of international provisions on maritime surveillance. The Regulation sets out clear rules for FRONTEX joint operations at sea, including with respect to the interception of vessels during joint operations at sea, search and rescue situations and the disembarkation of intercepted or rescued migrants. The Special Rapporteur received conflicting information as to whether the regulation has actually been able to resolve confusion and incoherence in search and rescue systems.

Operation Triton

55. In November 2014, the FRONTEX Joint Operation Triton was formed in order to take over from the Italian operation Mare Nostrum. Joint Operation Triton covers the search and rescue zones of Italy and Malta with the support of the countries' naval assets.

C. Bilateral agreements

56. Malta has readmission agreements with Albania and Montenegro, as well as with Kosovo. It has memorandums of understanding on migration matters with the Governments of Burkina Faso, Gambia and Nigeria, which allow for Malta to return nationals of those countries.

57. The Special Rapporteur was informed that these agreements all have specific articles dedicated to guarantees for the human rights of migrants. However, he remains concerned about the lack of monitoring of the implementation of such agreements.

D. Resettlement programmes

58. A number of countries both within and outside the European Union have offered assistance to Malta in managing the needs of those who have been granted asylum or subsidiary protection. While people's experiences of resettlement programmes are reported to be positive, the number of places are limited and it is unclear what criteria is used for selection.

1. EUREMA

59. In 2009, in order to release the pressure put on Malta by the Dublin system, the European Union member States and other European countries began a pilot resettlement project (EUREMA) to transfer recognized refugees and beneficiaries of subsidiary protection from Malta to the countries that had volunteered to assist. The programme was renewed in April 2011 and 15 countries pledged to resettle 356 people.

60. People wishing to benefit from the EUREMA project first undergo a pre-screening process with UNHCR, then they are assessed by a panel, set up by the countries providing support, for referral. If an applicant is formally referred, he or she is interviewed by representatives of missions sent from the expected destination country. If applicants are successful, funding is provided to support resettlement.[2]

2. Refugee programme of the United States of America

61. Since 2008, the United States has had a resettlement agreement with Malta that is run by IOM and UNHCR; the country has taken more than 2,000 people who were granted protection status in Malta. Many asylum seekers would prefer to obtain subsidiary protection rather than refugee status, so as to improve their chances for gaining access to this resettlement programme (people with subsidiary protection are given priority as they have no access to family reunification or citizenship in Malta).

E. Returns

62. There were 71 forced returns in 2013, and 92 in 2014. The Board of Visitors for Detained Persons reportedly monitors forced returns during the pre-departure and departure stages to ensure the escorts adhere to the procedures. However, the Special Rapporteur stresses that an independent body should conduct monitoring.

63. The Special Rapporteur received information that constraints on government capacity to forcibly return rejected asylum seekers leads to their being kept in detention facilities for 18 months before being released into society without sufficient support in the form of social protection. Their lack of a long-term visa exacerbates difficulties finding work and they are left living in fear of being forcibly returned or are vulnerable to abuse and exploitation.

64. The Special Rapporteur was informed that legislative amendments to the Common Standards and Procedures for Returning Illegally Staying Third-Country Nationals Regulations allow for a periodic review of the grounds of detention for irregular migrants awaiting forced returns. The review is conducted either on application or ex officio by the Principal Immigration Officer at reasonable intervals of time, which should not exceed three months. In the case of detention periods of six months or more, the Principal Immigration Officer is to carry out the review and notify the Refugee Appeals Board which is to supervise and, where necessary, revise such review. The Special Rapporteur received information questioning the effectiveness and efficiency of this procedure. It is also not clear how forced returns are conducted, especially in cases where people are arrested while at work or in the night and then returned.

[2] Department of Home Affairs, "EUREMA II" (2014) (https://homeaffairs.gov.mt/en/MHAS-Information/EUREMA/Pages/EUREMA-II.aspx)

F. Assisted voluntary return

65. Since 2006, migrants have systematically been offered the option for voluntary return through projects implemented in partnership with IOM.

66. IOM visits detention centres in order to inform migrants of assisted voluntary return opportunities. However, few take those opportunities. There were reportedly 55 assisted voluntary returns in 2013, while in 2014, as at November, there had been 69. The Special Rapporteur notes that assisted voluntary return programmes are useful, although when offered to migrants in detention they should not automatically be termed "voluntary".

67. An initiative linking the amount of money offered to the date at which migrants accept to be part of an assisted voluntary return programme — the more they wait, the smaller the amount — has not been an effective incentive for migrants to use such programmes soon after their arrival. This trial initiative should be abolished and a standard amount for assisted voluntary return should be restored. Migrants who participate must have a business plan in order to benefit from the funds offered; however, there is no effective or consistent monitoring system for these programmes.

68. IOM has also repatriated unaccompanied minors after confirming that it was in their best interests to be returned. During the visit, there were nine Egyptian unaccompanied minors who wanted to be returned.

V. Detention of migrants, and reception centres

A. Mandatory detention

69. All irregular migrants who arrive in Malta are detained upon arrival, with the exception of children, following a policy decision by the Government in April 2014. The Immigration Police collect basic biographical data of those on the boat and attempt to identify vulnerable groups, such as young children, people with disabilities or people with physical and mental health problems.

70. The immigration authorities in Malta systematically issue removal orders to all irregular migrants. The removal orders issued typically refer to the lack of means to sustain themselves or to their irregular entry. The irregular migrants are typically not informed of the considerations leading to the removal order, or given an opportunity to present information, documentation and/or other evidence in support of a request for a period of voluntary departure. They are consequently held in detention for maximum period of 18 months until they are granted protection status or until they are to be removed from Malta. Migrants can appeal to the Immigration Appeals Board only within three working days from the date of the issuance of the order. The appeal can be done verbally or in writing. The Board can grant the migrant provisional release from detention while it considers the case. If the order is revoked, the migrant is released from detention.

71. As discussed above, migrants and asylum seekers are often victims of human rights violations throughout their journey. Upon arrival in Malta, they are often traumatized by their migratory experience — some do not even remember the details of their first few days after arrival. They need time to rest, ponder their situation, get information, seek legal advice, understand the system and consider their options before being asked to fill any form which may prove a re-traumatizing process. Consequently, the requirement to fill out the preliminary questionnaire immediately after they arrive in Malta, although useful for border officials, might be counterproductive in meeting the protection needs for irregular migrants.

72. Although irregular migration is not criminalized legally, the practice of mandatory detention has the unfortunate result of portraying the migrants as dangerous criminals who should be locked up immediately upon arrival for the safety of the wider public. There is no evidence that any of the migrants who came to Malta over the years has ever constituted a general public security risk. Mandatory detention consequently serves only to inspire in the Maltese general population a feeling of fear and distrust against the migrants and asylum seekers. This climate of fear unfortunately goes on to taint the policies and programmes put in place by Maltese authorities and the relationship between migrants, asylum seekers and Maltese citizens.

B. Types of accommodation

73. Hal Safi and Lyster barracks are detention centres that hold irregular migrants. Both centres are located on military bases and subject to military jurisdiction. The Special Rapporteur is concerned that migrants are accommodated in military barracks, and urges the Government to develop alternatives to this type of detention.

74. Those who receive protection visas are housed in open centres, some of which are large and can accommodate a total of 2,000 people. Others are of a more modest size, housing about 40 people, making it easier for the integration of the migrants into society.

C. Conditions of detention

75. Since Lyster was closed, the Special Rapporteur only visited Hal Safi, which can accommodate 1,200 people. During the visit, it was accommodating only 32 male detainees in its main facility. Many of those migrants, who had all arrived by boat, were Nigerians, Gambians, Chadians and Ghanaians. Reportedly, the youngest was 17. In addition, there was reportedly a Nigerian couple who had been detained for seven months in a mobile home facility within the centre. The Special Rapporteur was unable to meet with them; he was informed that they were sick and had been taken to hospital.

76. All migrants detained at Hal Safi had been informed of their rights and had reportedly applied for asylum, but had been rejected without explanation; they were in limbo, uncertain about their future. This uncertainty causes insomnia, stress and depression. Incidences of violence, attempted suicide and self-harm have occurred when detainees receive news of their rejection for asylum.

77. The situation of asylum seekers requiring psychiatric treatment is a growing concern. The Special Rapporteur learned that they are sometimes placed in the same institution as prisoners and drug users. They are handcuffed to their beds or locked in a room, are rarely allowed to shower, and lack regular medical visits. Of even greater concern are reports that doctors also question the extent to which their professional responsibility extends towards irregular migrants.

78. Some detainees are released and given identity cards with the proviso that, if there is a problem, they will be returned to the detention centre. Those still at Hal Safi hoped that the same would happen to them.

79. The Special Rapporteur found that the detention centre lacked: personal space and privacy for migrants; potable water, which forced detainees to buy drinking water; adequate and decent-quality food; and adequate access to health care. While at Hal Safi, the Special Rapporteur noted that television-watching is the only recreational activity available. Additionally, detainees are allowed outside only for one hour per day, and thereby lack any

physical activity, despite the fact that there is an outdoor fenced space that can be used by detainees.

80. The Special Rapporteur welcomes the publication of the findings, also known as the Valenzia report,[3] of the independent inquiry into the death of Mamadou Kamara, a 32-year-old Malian, while in detention in Safi. He had tried to escape from a detention facility, was severely mistreated when recaptured and died from his injuries. Two officers were charged with murder and one for perverting the course of justice. This serves to demonstrate that all shall be held accountable in the protection of the rights of migrants. The Special Rapporteur also looks forward to the implementation of the inquiry's findings with regard to improving detention conditions.

81. The Government uses open reception centres as alternatives to detention. Asylum seekers do not receive adequate individual support and are not provided with comprehensive information about their rights, asylum procedures, appeals and removal, nor do they receive legal assistance. They frequently lack information about how to gain access to social services and contact support organizations.

82. The Balzan open centre is a small facility that accommodates families. Some have stayed there for more than 18 months. Although all are allowed to work, some are not able to get jobs and instead receive a monthly allowance. Those who work are in the hospitality industry and earn an average of €4.60 an hour and are required to pay taxes and insurance. They are provided with free accommodation and access to education for their children. Access to health care is available but sometimes limited by obstacles relating to language and accessible information. There are no dedicated interpreters in this centre and migrants rely on each other for translation. There are communal cooking, cleaning and sanitary facilities.

83. The Hal Far Tent Village open centre was originally designated for single men but now also accommodates single women and families with children. Similar nationalities are kept together to avoid tensions. Those with refugee status and subsidiary protection get a daily allowance of €4.60 and one meal per day. The sanitary facilities for men and women are located side by side and are not well lit, increasing the feeling of unsafety for children and women. There is insufficient hot water and the water is non-potable, so bottled water for drinking must be bought, as is the norm in Malta.

D. Special categories of detainees

1. Vulnerable groups

84. The Special Rapporteur was informed that some vulnerable persons are not subject to detention, and may only be detained pending medical clearance. During such time, access to health and other necessary services are made available. Furthermore, a group of professionals known as the Care Team, comprising social workers and welfare officers, is in place, to which persons with specific needs can be referred for individual assessment, follow-up and interventions.

2. Minors

85. Most children who arrive with their families are quickly moved from detention facilities to open centres. In the past, unaccompanied minors have been detained for longer periods for age determination. While in detention, unaccompanied minors live and sleep in

[3] The inquiry was headed by retired judge Geoffrey Valenzia.

the same areas as adults, without any special accommodation for their young age and without access to education.

86. Age determination is now carried out within three days of arrival. A primarily psychosocial approach is used, with the aim of reducing the number of children subjected to intrusive bone density procedures. The Special Rapporteur urges that full interviews with a psychologist be conducted with a child representative present. There should be room for the benefit of doubt, as owing to fear and uncertainty children may say that they are adults when in actual fact they are still minors.

87. The Special Rapporteur notes that if there are over 500 arrivals, the systems struggle to cope and to undertake timely age determination processes for all. In order to improve age assessments, the Agency for the Welfare of Asylum Seekers, which conducts the assessments, is consulting with Aditus, the Jesuit Refugee Service and UNHCR with regard to developing other procedural safeguards, such as appeals against the age assessment decisions.

88. The Special Rapporteur visited the Santa Venera open centre, which was accommodating 12 boys, all under the age of 17. All children who arrive at the centre are educated until the age of 16. However, the Special Rapporteur learned that some children do not like to attend classes, since they have difficulties with the language and culture. Some attend vocational training courses. The boys reported that the facilities did not have potable water or sufficient food. They are allowed to go outside for defined periods and are able to get cleaning jobs, and receive €8 per week in pocket money. They have very little activity to occupy them and have English lessons once a week. At the time of the visit, only two boys were going to English classes, as the others wanted to return to their countries of origin and therefore did not want to invest in staying in Malta. They seemed scared about their situation and uncertain about their future. At age 17, children are moved from Santa Venera to open centres that accommodate adults.

VI. Cross-cutting concerns

A. Access to justice

89. Overall, there is a general concern among irregular migrants in detention and open centres that some nationalities are favoured over others in relation to asylum claims. The system by which migrants are awarded refugee status or some other subsidiary protection is not perceived as transparent and leaves migrants frustrated and mistrustful of government officials, as well as of international organizations and civil society organizations on occasion. The Special Rapporteur urges the Government to take the measures necessary to ensure transparency and provide substantive grounds when awarding protection or rejecting claims and clarity about the duration of the process for acquiring protection.

90. There are a number of other issues relating to access to justice which are of concern to the Special Rapporteur.

1. Detention appeals

91. Under the Immigration Act, detention may be appealed to the Immigration Appeals Board within three days of the issuance of the removal order, or where detention is "unreasonable" pending an asylum application. The sittings before the Board are conducted in a manner similar to those held before the national courts. A lawyer provided by means of legal aid may assist individuals. Board members enjoy security of tenure, with a view to ensuring their independence. The Board may not authorize release when the identity of the

applicant has yet to be established, for example, when the applicant does not have travel or identification documents, as is the case of most migrants reaching Malta by boat.

92. This limited appeal system is not sufficient to meet international standards, as recognized by the European Court of Human Rights in *Massoud* v. *Malta*, which ruled that Malta had breached article 5.4 of the European Convention on Human Rights by not providing adequate legal recourse to challenge detention.

2. Asylum appeals

93. The Special Rapporteur was informed that the Refugee Appeals Board, the asylum appeal mechanism, comprises five chambers. The Board members are not all trained in immigration law or the migration policies of Malta. Some chambers are more effective than others and there is no effective coordination among the chambers, which results in inconsistency in procedures, process and case rulings, and the absence of development of a coherent case law.

94. All asylum seekers whose application is being processed at first instance by the Refugee Appeals Board have the right to have access to legal assistance at any stage of the procedure.[4] The legal aid is provided in accordance with an agreement between the Government and the Malta Bar Association. Reportedly, however, lawyers do not necessary have solid knowledge of asylum and immigration law and, as such, whenever possible, non-governmental organizations provide assistance in legal proceedings and in some cases may, at their own personal cost, hire private legal counsel. The Special Rapporteur stresses that asylum seekers and their legal representatives should consistently, without prompting, be provided with a copy of their case file in sufficient time prior to their appeal, as well as with competent legal aid.

B. Labour exploitation

95. The Special Rapporteur received information about the exploitation, by employers in Malta, of irregular migrants, asylum seekers and refugees, who refrain from protesting and mobilizing due to their fear of being detected, detained and deported. Migrant workers in an irregular situation are made to work long hours and paid less than the minimum wage in Malta, often in the construction, tourism and caregiving industries. They have to pay taxes but do not all share the same rights as citizens. For example, employers often give migrants lower wages and do not provide them with required safety equipment or insurance.

96. The Special Rapporteur learned that government contractors and subcontractors are prohibited from exploiting workers, including migrants. Those found exploiting workers are blacklisted and cannot get a government contract for three years. However, the Special Rapporteur observed that sanctions against employers are rare, and the directive of the European Parliament and of the Council of Europe on sanctions against employers remains unimplemented in Malta, as is the case throughout Europe.

97. There are currently 20 labour inspectors who work together with the Immigration Police. Although labour inspectors are not empowered to check immigration papers, it is not clear whether they conduct operations with the Immigration Police; that would be a very bad practice, as it would not provide incentives for migrants to call labour inspectors or health and safety inspectors when work conditions are unsafe or in violation of labour laws. There is a need for firewalls between public service and immigration enforcement, so

[4] Directive 2005/84/EC of the European Parliament and of the Council, art. 15 (1), implemented by Maltese law through Legal Notice 243 of 2008, para. 7 (1).

that labour inspections can be carried out without having to divulge anyone's immigration status.

98. Migrant workers are workers, whatever their immigration status, and should be treated equally under labour laws. Furthermore, it is important that Malta acknowledges that it has jobs for which it needs migrant workers, including low-wage migrants, and thus considers opening legal channels for migrants of all skill levels to come to Malta.

C. Xenophobic and discriminatory acts

99. There are misconceptions among the general public that all migrants and asylum seekers are criminals or diseased and are taking away jobs belonging to Maltese. Senior government officials fuel this rhetoric publicly. There is also growing anti-Islamism and fear. The Special Rapporteur notes that, in his discussions with the police, he was informed that crime figures had not changed.

100. Amendments under the Criminal Code were made in order to prohibit and penalize racially motivated crimes involving racial hatred, and the promotion of violence against persons or groups on the grounds of, inter alia, national or ethnic origin or citizenship. The Special Rapporteur notes that the anti-xenophobia and anti-discrimination laws of Malta are rarely enforced, and that the State needs to ensure that the prohibition of such acts on the grounds of nationality and citizenship is explicit in those laws.

101. The Special Rapporteur notes that the National Commission for the Promotion of Equality has carried out various initiatives to counter racism and xenophobia and to raise further awareness of equal treatment on the grounds of religion and belief as well as race and ethnic origin.

D. Integration within Malta

102. Asylum seekers and beneficiaries of subsidiary protection have access to free national education and health care. However, for many beneficiaries of international protection, pursuing further education is impossible without additional financial assistance. The Special Rapporteur urges the Government to offer a financial support loan scheme for those beneficiaries pursing further education. Furthermore, extra targeted language support would be useful for the children of asylum seekers and refugees.

103. Many migrants find it hard to integrate into Maltese society. They experience xenophobia and racism, can be subject to discrimination in relation to recruitment, pay and conditions within the workforce and experience uncertainty around their legal capacity to stay. Many migrants desire to move on to other European countries, which exacerbates a systemic view of migrants as a temporary problem and reinforces barriers to integration.

104. The Special Rapporteur welcomes the initiative of the Ministry for Social Dialogue, Consumer Affairs and Civil Liberties, which has, in collaboration with migrants, developed a website on integration, available in seven languages. He was also informed that a new directorate for integration will be established. It will implement a migration integration strategy, deal with complaints concerning equal treatment and have investigative powers, thereby enabling it to visit detention centres. The Special Rapporteur also welcomes the plans by the Ministry to establish an integration unit to address vulnerable groups, including migrants.

VII. Conclusions and recommendations

105. **Migration cannot be seen only through the lens of a border security operation, especially with recent arrivals, many of whom were fleeing wars, violence and conflict. Over-reliance on border security — which focuses on policing, defence and criminality instead of a more rights-based approach — only serves to give a false sense of control over one's borders.**

106. **In 2014, as a result of Mare Nostrum, the number of migrants arriving in Malta fell significantly because, once rescued at sea, migrants were disembarked in Italy. However, the Special Rapporteur cautions that this is likely to change, and Malta must prepare for rising numbers of migrants. He stresses that this migration phenomenon must be considered as the "new normal" for the coming years. The reception of such migrants and asylum seekers should not, therefore, always be conducted in an ad hoc emergency manner. The Special Rapporteur recommends that programmes be developed to build the capacity to adequately receive and process high numbers of migrants based on a long-term vision of migration. Such programmes should include measures to provide adequate immediate assistance, offer legal safeguards and promote integration.**

107. **The Special Rapporteur proposes several recommendations, as detailed below.**

A. Recommendations to the Government

1. Normative and institutional framework for the protection of the human rights of migrants

108. **The Special Rapporteur recommends that the Government:**

(a) **Implement the plans to establish a national human rights institution in line with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), ensuring that it is both functionally and financially independent of the Government and vested with the authority to investigate all issues relating to human rights, including those of migrants, regardless of their administrative status;**

(b) **Ensure the establishment of a fully independent national preventive mechanism, in accordance with the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which is mandated to visit all places where migrants may be deprived of their liberty;**

(c) **Ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.**

2. Border management

109. **The Special Rapporteur recommends that the Government:**

(a) **Further implement a human rights-based approach to migration and border management, ensuring that the rights of migrants, including irregular migrants, are always the first consideration;**

(b) **Ensure that readmission and cooperation agreements aimed at, inter alia, combating irregular migration include safeguards to fully respect the human rights of migrants, as well as ensure adequate protection of vulnerable migrants, including asylum seekers, in particular with regard to the principle of non-refoulement;**

(c) Establish a comprehensive mechanism for the identification of unaccompanied minors that includes not only medical exams but also a psychosocial and cultural approach, in order to best identify specific protection measures in the best interests of each child;

(d) Fully implement the relevant provisions of Regulation 656/2014 of the European Parliament and of the Council for all search and rescue operations coordinated by the Malta Rescue Coordination Centre;

(e) Agree on criteria to identify the place of safety where people rescued at sea should be disembarked as a matter of urgency, to render disembarkation predictable and quick. To this end, negotiations on a memorandum of understanding on disembarkation should be vigorously pursued within the IMO framework.

3. Detention and open centres

110. **The Special Rapporteur recommends that the Government:**

(a) Change laws and policies related to the administrative detention of irregular migrants, so that detention is decided upon on a case-by-case basis and pursuant to clearly and exhaustively defined criteria in legislation under which detention may be resorted to, rather than being the automatic legal consequence of a decision to refuse admission of entry or a removal order;

(b) Ensure that migrants are detained only when there is a reasonable basis to believe that they present a danger to themselves or others or would abscond from future proceedings, and always for the shortest time possible, and that non-custodial measures are always considered first as alternatives to detention;

(c) Establish places of administrative detention outside of military facilities and expeditiously take measures to transfer the detainees to the non-military facilities. Such detention centres should not be managed by military staff;

(d) Improve the management of government centres for irregular migrants, drawing from the recommendations made in the Valenzia report, the best practices observed in the current network of reception centres and in other facilities in Europe and around the world, and in accordance with relevant standards espoused by international human rights law;

(e) Strengthen contingency plans to avoid overcrowding and consequent deterioration of conditions during peak migration periods;

(f) Ensure that all detained migrants have access to proper medical care, interpreters, adequate food and clothes, hygienic conditions, adequate space to move around and access to outdoor exercise;

(g) Systematically inform detained migrants in writing, in a language they understand, of the reason for their detention, its duration, their right to have access to a lawyer, and the right to promptly challenge their detention and to seek asylum;

(h) Ensure that all migrants deprived of their liberty are able to promptly and easily contact their family, consular services and a lawyer, at all times and free of charge;

(i) Develop comprehensive human rights training programmes for all staff who work in reception centres, including training that enables them to identify detainees exhibiting mental health issues or in need of protection as victims of crime, and improve available mental health and support services in detention, based on the principle of informed consent;

(j) **Ensure the independent monitoring of reception centres so that they are all brought to the same standards;**

(k) **End the detention of unaccompanied migrant children. Additionally, migrant children require more culture and language support to help with integration at school and in society, more activities outside of the shelters to occupy them when they are not in school, and monitoring, for at least one year, to ensure an easy transition from shelters to open centres.**

4. **Access to justice**

111. **The Special Rapporteur recommends that the Government:**

(a) **Ensure full and proper access to justice for all detainees, including a more accountable system for lodging complaints within detention and reception centres;**

(b) **Ensure that all detained persons who claim protection concerns are, without delay, adequately informed of their right to seek asylum, have access to registration of asylum claims and can promptly and easily communicate with UNHCR, lawyers and civil society organizations;**

(c) **Establish a fairer and simpler system for migrant detainees to be able to challenge expulsion and detention orders;**

(d) **Ensure that the appeal proceedings are based on the merits and validation of detention;**

(e) **Provide explicit training for the Immigration Appeals Board and the Refugee Appeals Board on international human rights law and international refugee law;**

(f) **Expedite the implementation of legislation that allows migrants to challenge effectively their detention at any time, in line with the standards laid out by the European Court of Human Rights, through periodic review by a court of law on the necessity and legality of detention, and ensure that these mechanisms are accessible for children and other vulnerable groups;**

(g) **Provide unaccompanied children with free, competent and effective guardianship to ensure proper decision-making in all proceedings concerning such children, as well as free legal representation, to assist in all immigration and asylum proceedings;**

(h) **Guarantee fully the right to free legal assistance in expulsion, detention and asylum procedures to all migrants and asylum seekers in primary legislation and secure it in practice in all situations of detention of migrants and asylum seekers.**

5. **Cross-cutting concerns**

112. **The Special Rapporteur recommends that the Government:**

(a) Provide access to basic services, such as health care, to everyone living in Malta, regardless of their immigration status, in accordance with international human rights standards;

(b) Expedite the establishment of an integration unit that will focus on equality and non-discrimination for all, including for migrants and asylum seekers, inside the Ministry for Social Dialogue, Consumer Affairs and Civil Liberties. It should initially focus on public awareness campaigns to eradicate stereotypes and discrimination against migrants while promoting tolerance and respect for diversity

and on providing accurate data regarding migrants and asylum seekers and their economic and social contribution to Malta;

(c) Reinforce the public awareness campaigns through effective enforcement of laws on prohibiting racist and xenophobic acts and on prohibiting hate speech and racially motivated violence against migrants and asylum seekers. Ensure that any such cases are prosecuted and punished, and that appropriate compensation is awarded to the victims;

(d) Fully implement its legislation to combat direct and indirect racial discrimination with regard to the enjoyment of economic, social and cultural rights by immigrants, in particular refugees and asylum seekers, including access to private rental housing and the labour market;

(e) Fully implement the Employer Sanctions Directive, including by developing comprehensive measures to penalize Maltese employers who abuse the vulnerability of migrants by paying them low or exploitative wages;

(f) Avoid the criminalization of irregular migrants in language, policies and practice, and refrain from using incorrect terminology, such as "illegal migrant".

B. Recommendations to the European Union

113. **The Special Rapporteur recommends that the European Union:**

(a) **Ensure that European Union frameworks do not contribute to the restriction of human rights protections of migrants in Malta;**

(b) **Recognize that migrants will continue to arrive despite all efforts to stop them, and that, at some point, repression of irregular migration is counterproductive as it drives migrants further underground, thereby empowering smuggling rings and creating conditions of alienation and marginalization that foster human rights violations, such as discrimination and violence against migrants;**

(c) **Provide financial, material and logistical assistance to Malta for the reception and processing of migrants and asylum seekers;**

(d) **Ensure that Malta possesses a well-managed reception capacity that can sustain the foreseeable seasonal migration peaks. A shared responsibility by all European Union member States for reception includes some States offering part of their reception capacity to other front-line States experiencing migration peaks;**

(e) **Establish a programme for the quick relocation of asylum seekers across Europe, according to a distribution key and taking into account the wishes of the asylum seekers themselves, the possibilities of family reunification and humanitarian considerations that are essential to an equitable redistribution of responsibilities between States. If well managed, such a system would incentivize asylum seekers to register in the first European Union country of entry. It would encourage asylum seekers not to use the evasion tactics that are now systematically employed to avoid their identification and the application of the Dublin regulations;**

(f) **Develop a common asylum policy. States should mutually recognize each other's refugee status determination decisions, thus ensuring the mobility of refugees throughout the territory of the European Union. In order to gain confidence in each other's refugee status determination systems, they should develop a roster of decision-makers from each European Union country, at first decision and at appeals levels, for joint screening of asylum applications. With the help of the European Asylum Support Office and UNHCR, this would allow for the sharing of expertise, experience,**

good practices and lessons learned. It would also help create trust in the capacity of each national system, through the understanding that it is grounded on a common knowledge base relating to country-of-origin information, to be developed around a common interpretation of the legal criteria for protection and to be responsive to the same factors as considered in other systems;

(g) Work with States to open up more regular migration channels, including for low-skilled workers, thus reflecting the real labour needs of the European Union, which would lead to fewer irregular border crossings and less smuggling of migrants;

(h) Ensure that the cooperation with FRONTEX takes full account of the human rights of migrants, rather than focusing only on security-related aspects;

(i) Promote the swift family reunification of unaccompanied minors with their relatives who reside in other European Union member States, whatever their status;

(j) Ensure the full implementation of responsibility sharing between European Union member States in the management of its external borders. In particular take into full account the geographical position of Malta, which renders its coastlines particularly exposed to migration flows. This should include permitting asylum seekers the freedom of movement within the European Union and attributing European Union support funds to the country where asylum seekers establish themselves.

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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Special Rapporteur on the human rights of migrants, François Crépeau

Addendum

Mission to Sri Lanka : comments by the State on the human rights of migrants*

* Reproduced as received.

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Please recycle

Mission to the Gambia: comments of the Government of Sri Lanka on the report of the Special Rapporteur on the human rights of migrants

The following document represents the views and comments of the Government of of Sri Lanka in respect of the Report of the Special Rapporteur on the human rights of migrants, drafted following a country visit to of Sri Lanka from 19 to 26 May 2014.

Para 07

With a view to mitigate the issues of migrant workers abroad, the Sri Lanka Bureau of Foreign Employment (SLBFE) has introduced a training system for migrant workers, i.e Level 3 qualification of 'National Vocational Qualification' (NVQ). The introduction of this training system has reduced the number of complaints of migrant workers from 52% to 33%.

Any migrant worker, who has Level 3 NVQ, is considered as a "house- keeping assistant". House-keeping assistants are eligible to claim better benefits, such as insurance etc., during their employment in the receiving country.

Para 09

Percentage of Sri Lankan migrant men should read as 59.7% (2013 statistics)

Para 10

A considerable number of persons of Tamil ethnicity have migrated to Western countries and not to Middle Eastern countries. Therefore, migration to non-Middle Eastern countries does not come under the purview of the subject matter.

The lack of economic opportunities and livelihood continue to be determining factors which compel people to go abroad in search of better economic benefits. This is common to all communities in Sri Lanka and is not confined to any specific ethnic group.

In Sri Lanka, domestic workers choose overseas employment for two main reasons i.e. (a) to be able to build a house (b) to be able to avail of better education facilities for their children. Both are long-term objectives. Usually, when migrant workers are unable to achieve these objectives, they tend seek repeated employment abroad. Such repeated employment abroad by a father or mother of a family leads to complex social issues that have a detrimental effect on the family. Having taken into consideration this phenomenon, the SLBFE is working with the Ministry of Economic Development to help the families of migrant workers build houses. Under this programme, low-interest-rate loans are provided to the migrant workers before they leave Sri Lanka for foreign employment. They are encouraged to complete building their houses within the first six months of their work abroad. This scheme helps migrant workers achieve their dream of building a house by the time they complete their tenure of employment abroad. It also helps migrant workers to refrain from seeking repeated foreign employment enabling them to focus on their families' welfare upon their return and seek employment locally thereafter.

SLBFE is also providing scholarships for the children of migrant workers to facilitate educational needs. During 2013, the Bureau has mobilized 2500 scholarships. This number is expected to increase up to 3000 by 2015. SLBFE also conducts some talent events and reality shows among migrant workers and their family members as a means of recognizing

their work, and their contribution to the economy. This is also aimed at providing opportunities to them to discover and showcase their talents and skills.

Para 12

Sri Lanka signed the International Convention for the Rights of Persons with Disabilities (CRPD) in March 2007. Following the election of the new President, Mr. Maithripala Sirisena on 8th January 2015 and the formation of the new Government, a consultation process was initiated in May 2015, to take steps towards early ratification of the Convention.

Para 14

The ratification of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children was completed on 15 May 2015. The Instrument of Ratification has lodged with the UN Secretary General in the first week of June 2015.

Para 26

The Department of Immigration and Emigration which was previously under the purview of the Ministry of Defence was placed under the purview of the Ministry of Policy Planning and Economic Affairs, under the new Government formed following the January 8th 2015 Presidential elections.

The travel document is issued by the Department of Immigration and Emigration of Sri Lanka based on the National Identity Card (NIC) and the Birth Certificate. These two documents are generated by two different government institutions i.e Department of Registration of Persons and Registrar General's Department. Therefore, eventually, issuing of a travel document involves three different government institutions; the Department of Immigration and Emigration, the Department of Registration of Persons and the Department of Registrar General.

The issuing of a NIC is also not handled by a single institution. For example, the *Grama Niladari* (Village Officer), Divisional Secretariat and the Department of Registration of Persons are involved in issuing a NIC.

Under these processes, changing the date on a birth certificate or issuing a forged birth certificate or a travel document is not an easy task.

While, the issuance of forged travel documents or issuance of genuine travel documents based on false documents (unknowingly) or issuing visa based on using forged documents is a global issue and is not only confined to Sri Lanka, all possible steps are being taken continuously by remaining alert to ensure that such incidents do not occur.

Para 28

In terms of Section 15 of the Human Rights Commission (HRC) of Sri Lanka Act No.21 of 1996, any authority or person to whom a recommendation has been made is required to report to the HRC of the action or proposed action taken to give effect to the recommendations of the HRC. If any authority or person fails to report to the Commission of the action or proposed action to give effect to the recommendation or it is the view of the HRC that the action taken is inadequate, the HRC is required to submit a full report of the facts to His Excellency the President who shall cause such report to be placed before Parliament. Further to the above statutory requirement, the Ministry of Public Administration issued Circular 17/2005 to all public institutions directing them that they

should take necessary action to implement the recommendations of the HRC. In the event they are unable for good reason to implement any recommendations they are obliged to inform the Human Rights Commission of such reason/s.

The change of Government following the Presidential election held in Sri Lanka on 8 January 2015, has ushered in an atmosphere necessary for greater focus on *inter alia* independence of institutions including the Human Rights Commission. In this regard, the Sri Lanka Parliament adopted the 19th Amendment to the Constitution on 28th April 2015, which will set up an independent Human Rights Commission among other independent commissions.

The Government hopes that setting up of an Independent Human Rights Commission, following the constitutional amendment, would enable the Human Rights Commission to obtain 'A' status accreditation in compliance with the Paris Principles relating to the status of national institutions.

Para 35

The SLBFE has established a special Investigation Division to address the issues of exploitation of migrant workers at the recruitment process. This Division is empowered to take legal action against wrong doers. Annually, SLBFE entertains more than 3000 cases in connection with the exploitation of migrant workers. Cases are generally attended within 1-2 months.

Para 36

Many of the issues/problems that migrant workers face/come across in receiving countries are as a result of the actions or inaction of the sponsors or employers and not as a result of issues in connection with recruitment practices prevailing in the country. The migrant workers are always encouraged by the SLBFE to follow the guidelines introduced by the SLBFE to ensure transparent recruitment practices in Sri Lanka.

Para 43

SLBFE welcomes complaints against it and ideas and recommendations. The SLBFE does not refuse to accept complaints and instead, welcomes them as such complaints will enable the SLBFE to identify problems, deliberate on them and take steps to address them. Usually, the migrant workers who are not covered by insurance schemes are provided relief/compensation through the Workers Welfare Fund (WWF).

Para 62

Sri Lanka has complied with Article 1 of the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) and does not discriminate against women by any form of distinction, exclusion or restriction either by law or administrative practice. Article 12 (1) of the Constitution has clearly laid down the principle that all persons are equal before the law and are entitled to the equal protection of the law. Further Article 12 (4) of the Constitution states that nothing in Article 12 would prevent special provisions being made by law for the advancement of women, children and disabled persons. Article 12(2) of the Constitution prohibits discrimination based on sex.

For over 60 years, women in Sri Lanka have benefited from the universal health care system and the universal free education system from primary to the point of completion of the first degree at University (tertiary levels). These policies which continue to be in force have contributed significantly to women's empowerment, near equal participation in the labour force as well as increased engagement in decision-making processes. Attitudinal

changes that favour the position of women in society have been possible largely due to high levels of educational attainment and women being thereby recognized as equal partners and valuable contributors to the development process. Women continue to enjoy rights equal with men, both in political and public life. However, the number of women participating in active leadership roles in party politics remains low when compared to the percentage of women in the workforce. Women's participation in standing for election has been low although participation in political activity is high. This issue is receiving attention of the relevant political parties at present. Despite the low number of women political representatives, women's participation in the formulation of government policy, holding public office and performing public functions at all levels of the Government has increased. Today, women in the Sri Lanka Administrative Service number 1070 out of a total cadre of 2269 (which is 47.15 %), an increase from 17.1% in 1993. In the Sri Lanka Planning Service, the percentage of women is 47.63%, an increase from 28.8% in 1993. In the Sri Lanka Foreign Service, the percentage of women is 47.5%, an increase from 29.7% in 1993. It is to be noted that when it comes to professional services, participation of women is increasing, but is purely based on merit and not on quotas on the basis of gender.

Both male & female migrant workers maintain a close relationship with the SLBFE especially because of the pre-departure arrangements made by the SLBFE.

Para 71

Prior to the visit of the Special Rapporteur to the Mirihana Detention Centre for migrants, he met with the Controller-General of the Department of Immigration & Emigration (CG-I & E) who explained in detail, the administrative process in place with regard to persons who have violated Sri Lankan Immigration & Emigration laws. In this context, the (authorities) wishes to provide the following details with regard to procedures on this matter.

(a) Any person who has violated the Immigration and Emigration Laws of Sri Lanka may be detained until such time as arrangements are made for his/her departure. Any person who has violated the Immigrants and Emigrants Act, may be ordered to be removed from the country as soon as possible as per Sec. 28 (1) (a), (b), (c) of the amended Immigrants and Emigrants Act. No. 20 of 1948. For removing a person from Sri Lanka Sec. 28, Sec. 45 and Sec. 48 should be read together.

(b) All such cases of detention are individually assessed to establish nationality, reasons for violating immigration regulations etc, in order to liaise with foreign missions, IOM, families of the detainees to facilitate early departure. Foreigners who are found violating Immigration regulations are immediately removed from the country if there is a valid passport and a return air ticket in their possession. In the event the persons concerned do not have the required documentation/tickets/finances, authorities are compelled to house them in the Mirihana Immigration Detention Centre, until suitable arrangements for deportation are made. During this period, authorities make every possible effort to obtain valid travel documents for these persons by liaising with the respective embassies expeditiously.

(c) Those in detention at the Mirihana Immigration Detention Centre are free to move in and out of the facility. They have access to mobile phones and internet and are provided free medical care.

(d) With regard to the Special Rapporteur's meeting with four children who have stayed in the Mirihana Immigration Detention Centre with their families for a long duration: these 4 children were released by the Department of Immigration and

Emigration in the end of September 2014, as it is not the Department's intention to restrict the personal liberty of any person without fair reason. The family which theses children belonged to are considered as stateless persons and irregular immigrants. It is these circumstances pertaining to the family that compelled the concerned authorities to house them in the Mirihana Immigration Detention Centre. They did not have any valid documents or traces to prove their origin or nationality. Therefore, the authorities referred them to UNHCR to take determine the status of the family consisting of four children while they were being housed in the Mirihana Immigration Detention Centre. The authorities released them from immigration custody based on humanitarian grounds and mutual understanding, with the assurance of UNHCR that they will be moved to a third country for resettlement as early as possible.

(e) With regard to the 11 migrant detainees at Boossa Detention Centre: they were kept there as a temporary measure and have since been released.

(f) The authorities wishes to emphasize that detention of irregular migrants is a step taken only as a measure of last resort and always for a very short time period in order to make necessary arrangements for their departure. It is not the intention of the authorities to detain families and children at any point, but under certain exceptional circumstances, authorities are compelled to keep them in approved places to ensure their security and safety until their repatriation. All possible alternatives have been explored prior to such steps being taken.

Para 106

Repeal of circular requiring the Family Background Report to be furnished by female domestic workers, based on which mothers with children below 5 years will be prevented from leaving for employment until the younger child reaches the age of 5 years: This is considered Government Policy taken by the Cabinet of Ministers to ensure the safeguarding of the rights of children.

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Report by the Special Rapporteur on the human rights of migrants, François Crépeau

Addendum

Mission to Malta: comments by the State on the report of the Special Rapporteur on the human rights of migrants*

* Reproduced as received.

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Mission to Malta : comments by the State on the report of the Special Rapporteur on the human rights of migrants

The following document represents the views and comments of the Government of Malta in respect of the Report of the Special Rapporteur on the human rights of migrants, drafted following a country visit to the Malta from 6-10 December 2014.

National institutions and policies- (page 7):

The Ministry for Education and Employment is responsible for all issues relating to labour market issues and migrants. It also implements policy which allows for certain categories of migrants to apply for an exemption from the payment of tuition fees in state educational institutions.- No comments

B. Labour exploitation- (Page 18):

- The Special Rapporteur received information about the exploitation of irregular migrants, asylum seekers and refugees, by employers in Malta, as they refrain from protesting and mobilising due to their fear of being detected, detained and deported. Migrant workers in an irregular situation are made to work long hours and paid wages that are below the minimum wage in Malta, often in the construction, tourism and care-giving industries. They have to pay taxes but do not all share the same rights as citizens. For example, employers give migrants low wages and do not provide them with safety equipment or insurance.

- The Special Rapporteur learnt that government contractors and sub-constructors are prohibited from exploiting workers, including migrants. Those found exploiting workers are blacklisted and cannot get a government contract for three years. However, the Special Rapporteur observed that sanctions against employers are very rare and the EU Employer Sanction Directive remains unimplemented in Malta, as is the case throughout Europe.

- There are currently twenty labour inspectors who work together with the Migration police. Although labour inspectors are not empowered to check immigration papers, it is not clear whether they conduct operations with the immigration police: this would be a very bad practice, as it would not provide incentives for migrants to call labour inspectors or health and safety inspectors when work conditions are unsafe or in violation of labour laws. There is a need for firewalls between public service and immigration enforcement, so that labour inspections can be carried out without having to divulge anyone's immigration status.

- Migrant workers are workers, whatever their immigration status, and should be treated equally under labour laws. Furthermore, it is important that Malta acknowledges that it has jobs for which it needs migrant workers, including low-wage migrants, and thus open legal channels for migrants of all skill levels to come to Malta.

Feedback:

As an EU Member State, Malta has accepted the freedom of movement rights of EU nationals and their family members/dependents but reserves the right to demand a transitory period for new countries acceding the EU. Malta also abides by any agreements entered into by the European Commission and non-EU Member States concerning freedom of

movement. EU citizens and citizens agreed by such agreements take precedence over nationals of other countries in taking up employment in Malta. Irregular migrants enjoying subsidiary protection status issued by the Refugee Commissioner in Malta are given immediate rights to work in Malta. Other third country nationals have to go through the security and labour market test channels in order to qualify for the right to work in Malta. The demand by employers for low skilled and low paid individuals should not require the Government of Malta to open the legal channels, as this may give rise to non-adherence to legal framework concerning minimum conditions of employment. Moreover, the Government has a declared policy of steering the Maltese economy towards high-value added services requiring highly qualified and skilled personnel.

Furthermore, the report proposes the following recommendations:

Fully implement its legislation to combat direct or indirect racial discrimination with regard to the enjoyment of economic, social and cultural rights by immigrants, in particular refugees and asylum-seekers, including access to private rental housing and the labour market. (page 22) .- No comments

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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report by the Special Rapporteur on the human rights of migrants, François Crépeau

Addendum

Follow-up mission to Italy (2-6 December 2014)*

* Reproduced as received.

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Follow-up mission to Italy: comments by the State on the report of the Special Rapporteur on the human rights of migrants

The following document represents the views and comments of the Government of Italy in respect of the Report of the Special Rapporteur on the human rights of migrants, drafted following a visit from 2 to 6 December 2014.

Proposed amendments to the report of the Special Rapporteur on the human rights of migrants by the Ministry of Foreign Affairs and International Cooperation, Inter-ministerial Committee of Human Rights of the Italian Government.

II. General background on Italy and migration: a brief overview

Para. 8:

Italy received over 170.000 arrivals in 2014, most of whom were rescued at sea by the Italian navy operation Mare Nostrum beside the Italian Coast guard SAR activity outside Italian Search and Rescue Region (SRR).

III. Normative and institutional framework on migration and border management

IV. Border Management

A. Rescue at sea

Para. 42 Italian Coast Guard:

Lybia does not have SAR capacity. Malta and Greece have limited SAR capacity in Central Mediterranean area and do not assume responsibility for coordinating SAR operations outside their SRR as Italy is normally the first RCC to receive distress calls by migrants. Consequently, Italy is coordinating SAR for the entire Central Mediterranean, outside its Search and Rescue Region (SRR), covering an area of about 600.000 km2 in front of Lybia, where there is no competent RCC or actual SAR organization.

Although they feel committed to their rescue work, the Italian Coast Guard (also managing IMRCC) also have their capacity limitations when coordinating SAR operations far away from Italian SRR. That implies also the impossibility to relieve easily the merchant vessels in the area of the burden of their SAR obligations.

Para. 43 Mare Nostrum:

Italy launched a naval SAR operation called *Mare Nostrum*, beside the Italian Coast guard SAR activity outside the Italian Search and Rescue Region (SRR). [see II.8]

The Italian Navy employed an average of five of its ships and their air units also for SAR operations in cooperation with IMRCC (Italian Coast Guard).

Para. 44:

The Special Rapporteur noted the extraordinary efforts of *Mare Nostrum*, which managed to rescue over 170.000 persons.

Para. 46 Merchant vessels

Private vessels are heavily engaged in cooperating in SAR operations according with the international laws, by their own or at the request of the competent RCC. In 2014, almost 900 merchant vessels were involved in SAR operations.

B. Cooperation with FRONTEX

Para. 47:

The management of Italy's external borders is further supported by the EU border agency FRONTEX. FRONTEX works with Border Police, *Guardia di Finanza*, Carabinieri, supported also at sea by Navy and Italian Coast Guard, to combat irregular migration, migrant smuggling and migration related crimes.

D. Regional processes

Para 55-57:

Italy is strongly committed in implementing the Khartoum Process (KP), a new political dialogue on migration with the countries of the Horn and Eastern Africa, as well as the main Mediterranean transit countries, thus gathering countries of origin, transit and destination along the migratory route from the Horn of Africa to Europe. The parties are the EU member States, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Somalia, South Sudan, Sudan, Tunisia, the European and African Union Commissions. The KP was launched with a Ministerial Conference held in Rome on November 28, 2014 and adopted a Political Declaration listing the main goals of the Process such as: better organizing legal migration and fostering well-managed mobility, including intra and inter-regional labor mobility; assisting in improving national capacity building in migration management in all its components and addressing irregular migration, including through cooperation on return, in particular voluntary return, and readmission, preventing and combating trafficking in human beings and smuggling of migrants; maximizing the development impact of migration and mobility through concrete initiatives; promoting cooperation on protection and its principles for refugees and asylum seekers in accordance with relevant international conventions, and in particular the 1951 UN Geneva Convention.

The KP aims at identifying and implementing concrete projects. In the first phase, activities should concentrate on addressing trafficking in human beings, as well as smuggling of migrants. In the medium term, the activities of the KP could expand to other issues, in line with the priorities of the EU's Global Approach on Migration and Mobility (namely, legal migration, irregular migration, migration and development and international protection). It was also agreed the importance of an African ownership of the Process and the willing to carry out concrete projects financed through EU funds with the participation of international organizations such as UNHCR, IOM, and UNODC.

VI Cross cutting concerns

B. Labour exploitation

Para. 107-108:

The Italian Ministry of Labour and Social Policies is active in fighting against the illegal exploitation of non EU workers lacking valid residence permits as well as the phenomenon of *caporalato* (illegal hiring of farm workers for very low wages through an agent), aiming also at countering fiscal evasion, at safeguarding safety at work and at contrasting their illegal recruiting and employment. In all circumstances full enjoyment of rights is granted to foreign/non EU workers.

Illegal migrants are a particularly vulnerable category of workers, because they are afraid to be repatriated if their illegal status is discovered. For this reason they often accept very poor remuneration and bad working conditions, not acceptable by regular workers.

Illicit actions concerning irregular employment and job exploitation emerge above all within traditionally "crucial" sectors such as textiles and seasonal work in the agricultural field, also including the above mentioned *capolarato* phenomenon. They are monitored by regional and provincial Labour Inspection Directorates. Central Authorities target inspection activities according to a geographical and sectoral approach.

With specific reference to the outcomes of the surveillance activity carried out in 2014 by the Ministry of Labour, on a total of 140,173 companies inspected, 53% (74,745) were not in compliance with the law. The total amount of off-the-book workers was 73,508, of whom 1,018 non-EU workers lacking residence permit [mainly in Tuscany (32), Campania (165), Lombardy (143) and Emilia-Romagna Regions (110)].

In the building sector 26,998 cases were found in violation of safety rules and laws in force.

6,838 companies were obliged to suspend their activity. 5,618 resumed activity after complying with the law.

The same work opportunities are ensured for migrant workers as for Italian workers.

Moreover one of the functions of regional and provincial Labour Inspection Directorates is to report to the competent Public Security Forces the presence of irregular workers. The set of rules now in force in Italy provides for the prohibition for employers to recruit non-EU citizens lacking residence permits, imposing stricter sanctions to fight informal and irregular employment.

Law Decree No. 145 dated 23 December 2013, converted, with amendments, by Act No. 9 dated 21 February 2014, provides for a fine from 1.950 to 5.600 Euros for each employed worker, complemented by 195 Euros for each day of informal work. Furthermore if the worker lacks a residence permit (and also if the permit has been revoked, annulled or has elapsed), Legislative Decree No. 286/1998 and Legislative Decree No. 109/2014 provide for specific criminal sanctions for the employer (detention from 6 months to 3 years and a fine of 5.000 Euros for each employed worker), and an increase of the sanctions from 1/3 to 1/2 if the informal workers number more than three, or/and are minors, or/and are particularly exploited.

Moreover the employer has to pay the repatriation cost of the illegal worker. If the worker was victim of particularly severe exploitation, he/she may obtain a special stay permit, provided he/she denounces the employee and cooperates in the criminal investigations.

In the field of underground economy, the action of the Guardia di Finanza is aimed at targeting all aspects of illegality linked to the phenomenon of undeclared work - such as tax

and social contributions evasion, exploitation of illegal immigrants, social security fraud, manufacture and trade of products bearing counterfeit brands - and is focused on all labour-intensive sectors.

The activities of the Guardia di Finanza are aimed not only at recovering evaded taxes and contributions, but also at targeting assets and properties amassed by exploiting irregular workers.

In 2014 the Guardia di Finanza discovered a total of 25.305 irregular labourers, including 13.369 illegal workers and 11.936 unreported - of which 5.536 women. 3175 irregular workers and 2518 illegal workers were immigrants from non EU - countries.

5.082 employers were reported for employing irregular labour.

The investigations conducted by the Guardia the Finanza have identified the following business sectors as those prevalently affected by the phenomenon of unreported employment: the tourism and public businesses (60%), services sector (22%), the building industry (11%), agriculture (5%) and transportation (2%).

Finally Act No. 148/2011 amended the Criminal Code by inserting Art. 603-bis providing for a new sanction for the employers acting illegally as intermediaries and exploiting non EU workers, consisting of detention from 5 to 8 years plus a fine of 1.000 to 2.000 Euros for each employed worker.

VII. Conclusions and recommendations

F. Cross-cutting concerns

1. Develop and implement a national integration programme for all.

UNAR is developing the Action Plan against Racism, Racial Discrimination, Xenophobia and Related Intolerance, for 2015-2017. The Plan fully takes into account relevant international and national instruments, such as the Italian Constitution, especially Art.3, Legislative Decree No. 215/2003 (in accordance with Directive 2000/43/CE), Legislative Decree 216/2003 (in accordance with Directive 2000/78/CE), and Art.43 of Act No. 40/1998, concerning discrimination on the grounds of "race", skin colour, descent, national or ethnic origin, personal and religious belief, and language. In terms of scope, the Plan will consider both foreign citizens who live in Italy and Italian citizens of foreign origin, including those belonging to religious and ethnic and linguistic minorities. The Plan includes eight thematic areas/priorities, including matters of concern, actions, and objectives to be achieved also through affirmative actions in line with the legislation in force: Work and employment; Housing; Education; Health; Contacts with Public Administration; Law enforcement; Sport; Media and communication.

G. Recommendations to the European Union

156. Ensure the full implementation of responsibility sharing between EUMS in the management of its external borders, including SAR operations. In particular take into full account the geographical position of Italy that renders its coastlines particularly exposed to migration flows. This should include operational contributions to enhance SAR operations outside EUMS SRRs and permitting migrants the freedom of movement within the EU and the attribution of EU support funds to the country where migrants establish themselves as either asylum seekers.